165-330

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896.

No. 617.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

GEORGE E. JOHNSON, ADMINISTRATOR, ETC., OF PETER McNAMARA, DECEASED.

No. 618.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

MARGARET R. SHECKELS, HELEN C. SHECKELS, AND MARY M. D. SHECKELS, EXECUTRICES OF THEODORE SHECKELS, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1896.

(16396 and 16397.)

case. Bank defaulters are always represented by able counsel, and there can be no class of criminal cases in which the Federal practice of allowing the trial judge to indicate his own opinion of the facts is less dangerous to the prisoner or more conducive to a correct result.

The present charge is exceedingly long and the trial judge's opinion of the facts is clearly intimated, but it is submitted that, reading the charge as a whole, it is within the law.

HOLMES CONRAD,
Solicitor-General.
EDWARD B. WHITNEY,
Assistant Attorney-General.

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INDEX.

	Original.	Print.
Petition (No. 251)	1	1
Traverse (No. 251)	15	10
Petition (No. 252)	16	11
Traverse (No. 252)	17	12
Petition (No. 292)	18	12
Exhibit A. Contract between board of public works and Peter McNamara, July 24, 1872	28	17
B. Extension of contract No. 415, April 3, 1875	35	21
C. Statement of account and measurements	37	22
D. Statement of account and measurements	39	23
E. Letter of engineer to McNamara, November 6, 1875	40	23
F. Statement of account	41	24

	Original.	Print.
Petition (No. 292)—Continued.		
Exhibit G. Assignment from McNamara to Sheckels, November 5, 1874	42	25
H. Power of attorney from McNamara to Sheckels, October —, 1875	44	26
I. Power of attorney from McNamara to Sheckels, December 22, 1875	45	26
K. Power of attorney from McNamara to Sheckels, December 22, 1875	46	26
L. Power of attorney from McNamara to Sheckels, January 10, 1876	47	27
Traverse (No. 292)	48	28
Order to consolidate cases	48	28
Plea and bill of particulars	49	28
Substitution of administrator in Nos. 251 and 252	51	31
Substitution of executrices in No. 292	52	31
Findings of fact	53	31
Conclusions of law	54	32
Opinion of the court	55	33
Judgment in Nos. 251 and 252	56	34
Judgment in No. 292	56	34
Application for and allowance of appeal	58	35
Clerk's certificate	59	35

1 In the Court of Claims.

JOHANNA MCNAMARA, EXECUTRIX OF PETER McNAMARA, deceased, claimant,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } No. 251.

I. PETITION.—Filed December 15, 1880.

To the Honorable the Judges of the United States Court of Claims:

The petition of said claimant respectfully shows:

1. That she is a citizen of the United States and of the District of Columbia, now residing in the city of Washington, in said District.

2. That said Peter McNamara departed this life on or about the 25th day of December, A. D. 1878, having first made and executed his last will and testament, appointing claimant his executrix; that said will was duly probated, and on the 11th day of February, A. D. 1879, claimant was appointed by the supreme court of the District of Columbia executrix of the personal estate of Peter McNamara, deceased, who at the time of his death was a citizen and resident of the city and District aforesaid.

3. That the defendant, the District of Columbia, is a municipal corporation, created and existing under and by virtue of an act of the Congress of the United States, entitled "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878, and contained in the United States Statutes at Large, vol. 20, pp. 104, 108.

4. That the 41st Congress of the United States, at its 5th session, passed an act entitled "An act to provide a government for the District of Columbia," which was approved February 21, 1871, and will be found in the United States Statutes at Large, vol. 16, p. 419; which said act was regularly revised, and will be found in the Revised Statutes of the United States relating to the District of Columbia, approved June 22, 1874, p. 1.

5. That the 45th Congress of the United States, 1st session, by which the Revised Statutes were passed, also passed an act entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874, which will be found in the United States Statutes at Large, vol. 18, part 3d, pp. 116–121, which said act and the Revised Statutes are referred to in the aforesaid act of June 11, 1878.

6. That by the 37th section of the act of February 21, 1871, a board of public works was created, and existed until June 20, 1874, with entire control of the streets, avenues, alleys, and sewers of the said District, and such other work as might be entrusted to it by the legislative assembly, provided in the 5th section of said act; and also with power to make all regulations for improving said streets, avenues, alleys, and sewers, and for keeping them in repair; and also with express power to make contracts, to be signed by them and the party engaged or employed to do any of the aforesaid work for the said District.

7. That the Congress of the United States, at its last session, passed an act entitled "An act to provide for the settlement of all out-
2 standing claims against the District of Columbia, and conferring jurisdiction upon this court to hear the same, and for other purposes," approved June 16, 1880, and conferring upon this court original legal and equitable jurisdiction of all claims now existing against the

District of Columbia arising out of contracts made by the late board of public works, and extensions thereof made by the Commissioners of the District of Columbia, and for all claims for work done by the orders and directions of said Commissioners, and adopted by them for the use, purposes, or benefit of the said District of Columbia, and prior to the 14th day of March, A. D. 1876; and all certificates of the auditor of the board of public works; all certificates issued by the auditor and comptroller of the District of Columbia, &c.; all measurements made by the engineers of said District of work done under contracts made since February 21, 1871, for which no certificates have been issued to or received by the contractor or his assigns; and for all claims based upon contracts made by the board of public works for which no evidence of indebtedness has been issued, and other matters in said act mentioned.

8. That during the existence of said board of public works it regularly entered into a number of contracts with the said McNamara for the execution of a large quantity of work, legally entrusted to its care and control, for and on behalf of said District of Columbia.

9. That on or about the 7th day of April, A. D. 1870, a contract was duly made and entered into by and between Peter McNamara and the late corporation of Washington to do certain paving, parking, and to furnish the material in said contract mentioned, for the use, purposes, and benefits of said District of Columbia; and on or about the 8th day of May, A. D. 1871, said contract aforesaid was amended by the board of public works so that at North Capitol street thirty feet of the centre shall be parked, instead of being paved with stone. With this exception said contract aforesaid was adopted by the said board of
3 public works, whereby said McNamara did, under said contract and amendment or extension, and upon the order and direction of the said board of public works, work and furnish materials as follows: For North Capitol street, from B to C streets, amounting in the aggregate to $13,079.59, upon which there is a credit of $6,460.76 on account, leaving a balance due claimant of $6,618.83, with interest from the 8th day of January, A. D. 1872; North Capitol street, between B and D streets, to an aggregate amount of work done and material furnished, $9,711.22, to be credited by payment on account of $6,519.67, leaving a balance due claimant of $3,191.55, with interest from the 8th day of January, A. D. 1872; North Capitol street, from H to L streets, to aggregate amount of work done and material furnished, $26,165.87, to be credited by payment on account, $24,557.52, leaving a balance due claimant of $1,608.35, with interest from January 12, 1872; North Capitol street, from L street to New York avenue, to aggregate amount of work done and material furnished, as per measurement of January 12, 1872, $28,256.82, credit by payment on account, $26,546.48, leaving a balance due claimant of $1,710.34, with interest from January 12, 1872; also to taking up and removing 12 and 16 gutter stone and cobblestone on North Capitol street, between H street and New York avenue; 2,016 feet 12-inch gutter stones, at .03 per foot; 1,736 feet 16 gutter flag, at .05 per foot; 749 square yards of cobblestone, at 15 cents per square yard, making a sum in the aggregate due claimant for North Capitol street, $13,388.70, with interest on the several above-mentioned sums as aforesaid.

10. That on or about the 26th day of April, A. D. 1872, a contract

was duly made and entered into by and between said McNamara and the board of public works of the District of Columbia (being contract No. 248), whereby said McNamara agreed to do certain work in the city of Washington for the use, purposes, and benefits of the District of Columbia; under said contract and upon the order and direction of said board of public works, said McNamara did work and furnished material, to wit,

On Pennsylvania avenue SE., at First street east:

To 5,454 cubic yards grading, at 40 cents	$2, 181. 60	
888 lineal feet curbing, at $1.50	1, 332. 00	
26 " " $2.50	65. 00	
547 sq. yards of brick, at $1.00	547. 00	
1,415 sq. yds. sodding, at 50 cts	707. 50	
		$4, 833. 10

Pennsylvania avenue southeast, at Second street east:

To 4,536 cubic yds. of grading, at 40 cents	$1, 814. 40	
284 lineal feet of curb., at $1.50	426. 00	
12 " " $2.50	30. 00	
501 sq. yards of brick, at $1.00	501. 00	
1,500 " " sodding, at 50c	750. 00	
		$3, 521. 40

Pennsylvania avenue, at Third street southeast:

To 5,574 cubic yards grading, at 40 cents	$2, 229. 60	
441 lineal ft. of curb., at $1.50	661. 50	
29 " " $2.50	72. 50	
706 sq. yds. of brick, at $1.00.....	706. 00	
1,845 " " sodding, at 50 cts ...	922. 50	
		$4, 592. 10

Reservations formed by intersections of Fourth, Fifth, Sixth, and C streets and Pennsylvania avenue southeast:

To 34,491 cubic yards of grading, at 40 cents.....	$13, 796. 40	
3,338 lineal feet of curbing, at $1.50.	5, 007. 00	
85 lineal feet of curbing, at $2.50.....	212. 50	
4,163 square yards of brick, at $1.00.	4, 163. 00	
6,890 square yards of sodding, at 50 cents.....	3, 445. 00	
52,765 cubic yards of grading, at 40 cents.....	21, 106. 00	
8,737 lineal feet of curbing, at $1.50.	13, 105. 50	
6,175 square yards brick pavement, at $1.00	6, 175. 00	
5,273 square yards of sodding, at 50 cents.....	2, 636. 50	
28,000 cubic yards of grading, at 40 cents.....	11, 200. 00	
22,545 square yards of brick pavement, at $1.00	22, 545. 00	
11,907 lineal feet of curbing, at $1.50	17, 860. 50	
55,409 square yards of cobblestone taken up, at 15c.....	8, 311. 35	
		$102, 939. 85

Pennsylvania avenue, between Seventh and Eighth streets east:		
To 6,631 cubic yards grading, at 40 cents.	$2,652.40	
1,421 lineal feet of curbing, at $1.50.	2,131.50	
48 lineal feet of circular curb, at $2.50	120.00	
804 square yards brick pavement, at $1.00	804.00	
1,865 square yards sodding, at 50 cents	932.50	
		$6,640.40
To 137,451 cubic yards grading, hauled 3,900 feet over 200 feet, at 48¾ cents per yard		$67,007.38
To sewer work on Pennsylvania avenue from First to Seventh streets, and reservations from Fourth to Sixth streets east, under contract No. 248, as per engineer's measurement		$4,537.18
To extra work on said avenue and said reservation, as per account No. 4		7,791.94
To extra work, per account No. 5		3,167.70
" " " " " 6		492.45
" " " " " 7		267.29
" " " " " 8		472.35
Total for paving avenue and reservations		$232,887.04
Upon which should be placed the following credit:		
Cr. by material	$23,931.69	
" by certificates received on account	116,675.97	
		$140,607.66
Balance due		$92,279.38
With interest from September 1, 1870, less error in account		2,629.05
Net balance due and interest from September 1st, 1873.		$89,650.33

11. That on or about the 3d day of Oct., 1873, a contract was duly made and entered into by said McNamara and the board of public works of the District of Columbia (being No. 552), whereby the said McNamara did do certain work, and furnished the material therein mentioned, amounting in the aggregate of measurement, as per account No. 9, to $1,387.40

As, also, the aggregate of measurement, as per account 10.. 1,723.75

$3,011.15

Cr. by certificates on account 1,723.75

Balance due $1,287.40
besides interest from July 23d, 1873.

7 That said work and material have never been fully paid for by said board of public works, or their successors, or any other

person representing said District, and that there still remains fairly due said McNamara by said District, on account of said work, the sum of $1,287.40, and interest from July 23d, 1873.

12. That on or about the 15th of May, 1873, a contract was duly made and entered into by and between Peter McNamara and the board of public works of the District of Columbia (being contract No. 681), whereby the said McNamara agreed to do certain work therein set forth, for the use, purposes, and benefits of the District of Columbia, and under said contract and upon the order and direction of said board of public works, said McNamara did work and furnished material amounting in the aggregate by measurement, on C street SE., between 3d and 4th streets, as per account No. 11 ..... $6,878.27

Also for extra work, as per account No. 12 ..... 242.64

$6,878.27

Upon said sum should be credited by material $69.00

And by certificates 6,185.26

6,254.26

Balance due $624.01

and interest from June 27th, 1873.

That said sum has never been fully paid by said board of public works or their successors, or any other person representing said District of Columbia, and there still remains fairly due claimant by said District, on account of said work and material under said contract, the sum of 624.01, and interest from June 27th, 1873.

13. That on or about the 8th of April, A. D. 1873, a contract was duly entered into by and between Peter McNamara and the board of public works of the District of Columbia (being contract No. 658), whereby the said McNamara agreed to do certain work therein set forth, for the use, purposes, and benefits of the District of Columbia, and under said contract and upon the order and direction of said board of public works, said McNamara did work and furnished material on 3d street southeast, from Pennsylvania avenue to C street as per account No. 13 ..... $5,829.88

8

Also for extra work on said streets, as per account No. 14 .. 180.06

$6,009.94

Upon said sum there should be credited by certificates 5,304.39

Balance due $705.55

with interest from June 27th, 1873.

That said sum has never been fully paid by said board of public works or their successors, or any other person representing said District

of Columbia, and there still remains fairly due claimant by said District, on account of said work and material under said contract, the sum of $705.55, with interest from June 27, 1873.

14. That on or about the 13th day of September, A. D. 1872, a contract was duly made and entered into by and between Peter McNamara and the board of public works of the District of Columbia (being No. 515), whereby the said McNamara agreed to do certain work therein set forth, for the use, purposes, and benefits of the District of Columbia, and under said contract and upon the order and direction of said board of public works said McNamara did work and furnished material on Nichols avenue, between Uniontown and the Hospital for the Insane and Howard avenue, to wit:

To 26,601 cub. yds. clay excavation, at .60 per yard.....		$15,960.60
4,666 cub. yds. gravel roadway, at .40.....		1,866.40
21,936 cub. yds. grading, at .30.....		6,580.80
4,915 cub. yds. graveling moved twice, at .45.....		2,211.75
4,915 cub. yds. graveling moved three times, at .60.		2,949.00
9 22,600 sq. yds. graveling, at .15		3,390.00
43,373 cub. yds. hauling, 460 feet over 200 feet, at .05¾.....		2,493.95
22,600 sq. yds. gravel, hauled a distance 5,280 feet over 200 feet, at .22 per yd.....		4,972.00
31,085 cub. yds. stone masonry, at $7.00		2,175.95
10,000 bricks for arch, furnished and laid, at $22.00 ..		220.00
4,087 sq. yds. cobble-stone gutter, at .70		2,860.90
taking up and relaying 435 sq. yds. of cobble-stone, at .50.....		217.50
4,205 sq. yds. returning soil, at .25.....		1,051.25
4,087 sq. yds. cobble-stone hauled from city		612.00
		$47,562.80
Sumner street:		
To 1,625 cub. yds. grading, at .30 per yard..	$487.50	
1,625 cub. yds. haul 400 feet over 200 feet, at .25	81.25	
17 cub. yds. stone masonry for culvert, at $2.50	42.50	
888 sq. yds. cobble-stone for gutters, at .70	621.60	
27 feet 24-inch pipe, laid, at .45	12.15	
hauling pipe.....	10.00	
hauling stone	17.00	
888 sq. yds. cobble-stone hauled from city	135.00	
		1,407.00
To grading Hickman street:		
To 1,325 cub. yds. grading, at .30 per yard..	$397.50	
1,325 cub. yds. hauled 400 feet over 200 feet, at 5 cents per yard	66.75	
		463.75

10 To grading Howard street:

To 2,538 cub. yds. grading, at .30 per yard.	$761.40	
2,538 cub. yds. hauled 400 feet over 200 feet, at 5 cents per yard	126.90	
		888.30

To grading Sheridan street:

To 776 cub. yds. grading, at .30 per yard	$232.80	
776 cub. yds. hauled 400 feet over 200 feet, at 5 cents per yard	38.80	
		271.60
Total		$50,592.75
That upon said sums there is a credit, by payment on account by certificates		34,125.68
Balance		$16,467.07

That said sum has never been fully paid by said board of public works or their successors, or any other person representing said District of Columbia, and there still remains fairly due claimant by said District, on account of said work and material, the sum of $16,467.07, with interest from November 15, 1873.

15. That on or about the 14th day of August, A. D. 1873, a contract was duly made and entered into by and between Peter McNamara and the board of public works of the District of Columbia, (being contract No. 850,) whereby the said McNamara agreed to do certain work therein set forth, for the use, purposes, and benefits of the District of Columbia; and under said contract, and upon the order and direction of said board of public works, said McNamara did work and furnished material in sewering 6th street east, from Pennsylvania avenue to

11 Virginia avenue, as per account No. 16 ..... $12,814.94

Also to extra work on same street, as per account No. 17 ..... 140.00

$12,954.94

Upon said sum there should be credited by materials	$3,411.80	
And by certificates	8,365.94	
		11,777.74
Balance		$1,177.20

That said sum has never been fully paid by said board of public works or their successors or any other person representing said District of Columbia, and there still remains fairly due claimant by said District, on account of said work and material, the sum of $1,177.20, with interest from January 2, 1874.

16. That on or about the 10th day of June, A. D. 1873, a contract was duly made and entered into by and between Peter McNamara and the board of public works of the District of Columbia (being contract No. 716), whereby said McNamara agreed to do certain work and furnish material for the use, purposes, and benefits of the District of Columbia, and subsequently said contract was amended or extended, and under said contract and extension and upon the order and direction of said board of public works said McNamara did work and furnished material on 6th street southeast, from Pennsylvania avenue between K street, as per account No. 18..... $9,864.55
Also for work done on the same street, as per account No. 19. 34,029.78

$43,894.33

To work done on 6th street southeast, from E to G street, as per account No. 19½..... 831.87

$44,726.20

Upon said sum there should be a credit by material on account..... $286.79
And by certificates..... 34,300.37
34,587.16

Balance..... $10,139.04

12 That said sum has never been fully paid by said board of public works or any other person representing said District of Columbia, and there still remains fairly due claimant on account of said work and material the sum of $10,139.04, with interest from January 17, 1876.

17. That on or about the 24th day of July, A. D. 1872, a contract was duly made and entered into by and between Peter McNamara and the board of public works of the District of Columbia (being contract No. 415), whereby the said McNamara agreed to do the work and furnish the material therein described, for the use, purposes, and benefits of the District of Columbia; and on or about the 3d day of April, A. D. 1875, and the 22d day of October, A. D. 1875, respectively, said contract was amended or extended, and under said contract and extensions or amendments, and upon the order and direction of said board of public works, said McNamara performed and completed the following work:

To work done on C street northeast, from Sixth to Fifteenth streets, as per account No. 20... $3,150.00
To work done on said street, as per account No. 21. 29,071.19
To work done on said street, between Thirteenth and Fifteenth streets, as per account No. 22.. 1,242.50
To work done on said street, as per account No. 23. 406.50
$33,870.19

To work done on D street northeast, from Fourth to Fifteenth streets, as per account No. 24...$32,384.69
To work done on said street, as per account No. 25. 2,531.55
34,916.24

13	To work done on A street southeast, from Third to Ninth streets, as per account No. 26	$18,230.55	
	To work done on the same street, from Third to Fifth streets, as per account No. 27	566.14	
			18,796.69
	To work done on alley in square 727, as per account No. 28		42.35
	To work done on Seventh street southeast, between East Capitol and A streets, as per account No. 29		2,444.61
	To work done on Ninth street northeast, from C street to Maryland avenue, as per account No. 30		6,050.24
	To work done on Ninth street northeast, from C street to Maryland avenue, as per account No. 31		1,681.29
	To work done on Tenth street northeast, from C street to Maryland avenue, as per account No. 32		305.09
	To work done on intersection of D street and Maryland avenue northeast, as per account No. 33		291.41
	Total		$98,398.11
	That upon this sum should be credited by material account	$746.27	
	By certificates	86,741.65	
			87,487.92
	Balance		$10,910.19

That said sum has never been fully paid by said board of public works, or any other person representing said District of Columbia, and there still remains fairly due claimant on account of said work the sum of $10,910.19, with interest from the day of , 1875.

14 18. That said board of public works took from the private lot of said McNamara, at the corner of 5th and C streets southeast—

	3,000 feet of 16-inch bridge stone, at 48 cents per foot	$1,440.00
	To hauling same from 3d-street wharf to said lot, at .08 per foot	240.00
		$1,680.00
	To credit by certificates received on account	383.52
	Balance	$1,296.48
	To work done in front of McNamara's property on East Capitol street and 3d street southeast, as per account rendered to the board of audit, October 6, 1874	438.69
		$1,735.17

That said sum has never been fully paid by said board of public works, or any other person representing said District of Columbia, and there still remains fairly due claimant, on account of said work and material, the sum of $1,735.17, with interest from October 6th, 1874.

19. That under all of the aforesaid contracts, extensions, and amendments, and upon the order and direction of said board of public works, the said McNamara did work and furnished material to the amount of $535,050.22, and which said work and material was accepted by the said board of public works of the District of Columbia and by the District of Columbia, for the use, purposes, and benefit of said District; that said work and material have never been fully paid for by said board of public works, or their successors, or any other person representing said District of Columbia, and there still remains fairly due claimant by said District of Columbia, on account of said work and material, the sum of $146,084.66, and interest on the several sums as aforesaid.

15 20. That said contracts, extensions, and amendments are in the possession of the Commissioners of the District of Columbia, and they have refused and still refuse to permit this claimant to have possession of or examine the same, and she is therefore prevented from annexing them to this petition, and from stating herein the contracts thereof with any greater particularity than she has already hereinbefore done.

21. Claimant further shows to the court that the said several averments hereinbefore named and set forth have been stated by the said defendant as being the balances respectively due on account of the contracts for work, labor, and material hereinbefore referred to, and that the same appear by the books and papers of the said defendant, as claimant is informed and verily believes.

22. That no assignment of this claimant's said claim, or any part thereof, or any interest therein, has been made by this claimant or by said McNamara.

23. That no person, except this claimant, is the owner of the said claim, or has any interest therein, and she is justly entitled to the amount thereof, to wit, the sum of $146,084.66, with interest on the several sums as hereinbefore stated, after allowing all just credits and offsets.

Wherefore the claimant prays that she may have judgment against the said District of Columbia for the sum of $146,084.66, with interest on the several sums, as hereinbefore stated.

JOHANNA MCNAMARA,
Executrix.

L. G. HINE & J. J. JOHNSON,
Attorneys for Claimant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

The matters and things stated in the foregoing petition are true, to the best of my knowledge and belief.

JOHANNA MCNAMARA,
Executrix.

Subscribed to and sworn by the above Johanna McNamara, in the said District of Columbia, before me, a notary public therein and therefor, duly commissioned and qualified.

Witness my hand and notarial seal this 13th day of December, A. D. 1880.

[SEAL.] C. S. BUNDY, *Notary Public.*

II. *Traverse.—Filed January 5, 1881. No. 251, D. C.*

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

16 JOHANNA MCNAMARA, EXECUTRIX OF PETER McNAMARA, deceased, claimant,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } No. 252.

III. *Petition.—Filed December 15, 1880.*

To the honorable the judges of the United States Court of Claims:

The petition of said claimant respectfully shows:

1. That she is a citizen of the United States, and of the District of Columbia, now residing in the city of Washington, in said District.

2. That the said Peter McNamara departed this life on or about the 25th day of December, A. D. 1878, first having duly made and executed his last will and testament, and appointing claimant his executrix; and that said Peter McNamara was a citizen of the United States, and at the time of his death aforesaid he resided in the District of Columbia.

3. That some time in the year 1871 the defendant, through the board of public works, contracted with said Peter McNamara to macadamize Pennsylvania avenue from 1st to 8th streets southeast for the sum of one dollar and fifty cents per square yard; that subsequently said contract was amended or changed by said board of public works so as to deprive said McNamara of the benefits to be derived thereunder, by changing said macadamizing to wooden pavement, and given to another contractor, which resulted in damages to said McNamara.

4. That on or about the 24th day of July, 1871, a contract was duly entered into by and between said McNamara and the board of public works, being Contract No. 415, whereby the said McNamara agreed to grade, lay curbs and brick pavements on C and D streets from Fourth to Fifteenth streets northeast; that on the 3d of April, 1873, and the 22d of October, 1875, the defendant, through the Commissioners, modified and changed said contract by reducing the amount of grading 50,000 cubic yards. The average hauling would be about forty-five cents per cubic yard, and claimant claims damages at fifty cents per cubic yard; that for the purpose of carrying out and completing the work under said contracts above mentioned and performing said contracts in good faith, the said McNamara had on hand a large number of horses, carts, wagons, implements, and materials of all kinds and quantities necessary to carry on and complete the work under said contracts, the defendant, through said Commissioners, and without the consent of said McNamara, made the modifications to said original contract as above set forth in paragraph No. 3, to the damage of said McNamara, whereby said claimant claims damages at the rate of fifty cents per cubic yard, and for damages under original contract on Pennsylvania avenue from First to Eighth streets

southeast, as set forth in paragraph No. 3 of this petition, claimant claims on 46,920 square yards, at fifty cents a square yard, as well as on contract No. 415, at 50 cents a cubic yard for 50,000 cubic yards.

17 That no part of said claim has been assigned or transferred, or any interest therein, to anyone, nor was any assignment or transfer made by the said McNamara in his lifetime to anyone; that no other person is the owner of said claim, or has any interest therein, except this claimant.

Wherefore this claimant claims damages because of the modifications of original contract on Pennsylvania avenue, from First to Eighth streets southeast, at the rate of fifty cents per cubic yard, and under contract No. 415.

JOHANNA MCNAMARA,
Executrix.

L. G. HINE & J. J. JOHNSON,
Attorneys for Claimant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

The matters and things stated in the foregoing petition are true, to the best of my knowledge and belief.

JOHANNA MCNAMARA,
Executrix.

Sworn and subscribed to by the above Johanna McNamara, in the said District of Columbia, before me, a notary public therein and therefor, duly commissioned and qualified.

Witness my hand and notarial seal, this 14th of December, A. D. 1880.

[SEAL.] C. S. BUNDY, *Notary Public.*

IV. *Traverse.—Filed January 5, 1881. No. 252, D. C.*

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

18 V. *Petition.—Filed December 15, 1880.*

THEODORE SHECKELS
vs.
THE DISTRICT OF COLUMBIA. } No. 292.

The petitioner and claimant, Theodore Sheckels, respectfully represents:

First. That he is a citizen of the District of Columbia, and resides in the city of Washington, at No. 1013 N st. NW.

Second. That the defendant, the District of Columbia, is a municipal corporation created and existing under and by virtue of an act of the Congress of the United States entitled "An act providing a permanent

form of government for the District of Columbia," approved June 11th, 1878, and contained in the U. S. S. at L., vol. 20, pp. 102–108.

Third. That the 41st Congress of the United States at its third session passed an act entitled "An act to provide a government for the District of Columbia," which was approved February 21, 1871, and will be found in the U. S. S. at L., vol. 16, pp. 419–429, which said act was regularly revised, and will be found in the Revised Statutes of
19 the United States relating to the District of Columbia, approved June 22d, 1874, commencing on page one (1) of said Revised Statutes.

Fourth. That the 43d Congress of the United States, first session, by which the Revised Statutes were passed, also passed an act entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, which will be found in the U. S. S. at L., vol. 18, part 3d, pp. 116–121, which said act and the Revised Statutes are referred to in the aforesaid act of June 11th, 1878.

Fifth. That by the 37th section of the act of February 21st, 1871, a board of public works was created and existed until June 20th, 1874, with entire control over the streets, avenues, alleys, and sewers of the said District and such other works as might be entrusted to it by the legislative assembly provided in the fifth section of said act; and also with the power to make all regulations for improving the said streets, avenues, alleys, sewers, and for keeping them in repair; and also with express power to make contracts to be signed by them and the party engaged or employed to do any of the aforesaid work for the said District.

Sixth. That the Congress of the United States at its last session passed an act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June 16th, 1880; and conferring upon said court original, legal, and equitable jurisdiction of all claims now existing against the District of Columbia, arising out of contracts made by the late board of public works, and extensions thereof made by the Commissioners of the District of Columbia * * * and of all claims for work done by the
20 order or direction of said Commissioners and accepted by them for the use, purposes, or benefit of the said District of Columbia, and prior to the 14th day of March, 1876, and all certificates of the auditor of the board of public works; all certificates issued by the auditor and comptroller of the District of Columbia. * * * All measurements made by the engineers of said District, of work done under contracts made since February 21st, 1871, for which no certificates have been issued to and received by the contractor or his assignee, * * * and of all claims based upon contracts made by the board of public works for which no evidence of indebtedness has been issued," and other matters in said act mentioned.

Seventh. That during the continuance of the board of public works it regularly and legally entered into various contracts with one Peter McNamara, late of the District of Columbia, for the execution of a large amount of work under its control and entrusted to its care, and among them were two contracts, numbered in the series of contracts made by said board as 716 and 415. That afterwards contract 415 was extended

at different times in writing, between the said McNamara and the Commissioners of said District, to include various other work not provided for in original contract No. 415. That after the abolition of the board of public works and the creation of the Commissioners of the District of Columbia, the latter approved and ratified said contracts and the extensions thereof and directed the work mentioned therein remaining undone to be performed. Contract number 415 is annexed hereto as part hereof, marked Exhibit "A;" also one of the extensions of
21 said contract number 415, bearing date on the 3d day of April, 1875, is annexed hereto as part hereof, marked Exhibit "B."

Eighth. That under and in pursuance of said contract numbered 415, as extended by the paper marked Exhibit "B," the said Peter McNamara did work and provided material for the grading and paving of D street, between 10th and 12th streets northeast, to the amount of $2,531.55. That on the 14th day of December, 1876, the authorities of the said District stated and approved the account of the said McNamara for said work at the sum aforesaid, but the same has never been paid to him or anyone for him, or for his use and benefit, but the same remains on file and of record in the Commissioners' office of the *siad* District, and a copy thereof, together with a copy of the letter of approval of the engineer of said District, transmitting the same to the said Commissioners, is filed herewith as an exhibit marked "C," and made part hereof.

That under and in pursuance of the said contract number 415, as extended by Exhibit "B," the said Peter McNamara performed work and furnished material, in grading and paving 9th street northeast, between C street and Maryland avenue, to the amount of $1,681.29, which was afterwards, on the 14th day of December, 1876, measured and approved by the engineer of the said District, and forwarded to the said Commissioners for payment, but has never been paid. A copy of the account as stated and approved by the engineer of said District, and his letter of approval to the said Commissioners, is filed herewith as Exhibit "D," and made part hereof.

Ninth. That on the 6th day of November, 1875, the said Peter
22 McNamara was authorized, by written letter to him directed by the engineer of the said District, to relay the foot walk on the west side of the 7th street, from East Capitol to south A street, as extra work under said contract number 415, as will more fully appear by reference to a copy of said letter filed herewith as part hereof, and marked Exhibit "E." That in pursuance of said letter the said McNamara did the work therein mentioned, and provided the necessary material therefor, and afterwards, on the 22d day of January, 1876, a bill was rendered for the same amounting to the sum of $2,260.15, and approved by the acting engineer of the said District, and the same remains on file among the records of said District, but the same and no part thereof has ever been paid to said McNamara, or to anyone for his use.

Tenth. That said contract numbered 716 was substantially like the said contract numbered 415 in its conditions and stipulations. That the said McNamara did a large quantity of work, and furnished much material, under the terms and conditions of said contract, and that on the 19th day of January, 1876, there was a statement of account made by the officers and agents of the said defendant for certain work done under

said contract No. 716. And in such settlement there was retained by the said defendant from the amount due said McNamara on brick pavement on 6th street, between Pennsylvania avenue and K street SE., the sum of $262.21, to indemnify said District against loss for defective work and material, which was retained in pursuance of one of the stipulations of said contract. All of which will appear by reference to said statement of account now on file in the records of said District, voucher No. 19,608, and the same is hereby referred to as part
23 of this petition. But there was no defect in work or material, as time proved, and said McNamara became entitled to receive the said sum of $262.21, but the same never has been paid to him, or for his use and benefit.

Eleventh. That on the 24th day of December, 1875, the said Peter McNamara, by your petitioner, received a partial payment for certain work done and material furnished in laying a brick pavement on A street SE., between 3rd and 9th streets, under contract 415, and that there was deducted and retained by the defendant, from the amount then due said McNamara for said work, the sum of $196.95 to indemnify said District against possible loss from defective work or material, in accordance with one of the stipulations of said contract. All of which will appear by reference to said account now on file in the records of said District, as Voucher No. 19,454, and which is hereby referred to. And your petitioner says that neither said work nor material proved defective within the time specified in said contract, and McNamara, or your peti'oner, became entitled to receive said $196.95, but the same never has been paid.

Twelfth. Your petitioner further shows that on the 5th day of November, 1874, the said Peter McNamara, for a valuable consideration, by writing under his hand and seal, and duly acknowledged before a notary public, assigned to petitioner all his right, title, and interest in and to any claim that he then had or might thereafter have against the said District of Columbia, and all interest he might have in any and all bonds, certificates, or other forms of indebtedness that might be issued by the District of Columbia, or in any money that might become due and payable to him under said contract No. 415, for work done or that might thereafter be done by him, and by said writing empowered your
24 petitioner to collect and receive the same from said District, all which will more fully appear by reference to said assignment and power of attorney, a copy of which is filed herewith as part hereof, marked Exhibit "G."

Thirteenth. That on the 16th day of October, 1875, the said Peter McNamara, for a valuable consideration, made and executed to your petitioner an irrevocable power of attorney, authorizing him to receive and receipt for all money, certificates, or bonds that might be or become due him for work done under the extension of contract No. 716. And on the 22d day of December, 1875, the said McNamara executed to your petitioner, for a valuable consideration, another power of attorney like the one above mentioned, authorizing him to receive and receipt for all money, certificates, or bonds that might become due him under extension of contract No. 716. And on the said 22d day of December, 1875, the said Peter McNamara executed to your petitioner another power of

attorney authorizing him to receive and receipt for all money, certificates, or bonds that might become due him for work done under the extension of contract No. 415 therein mentioned. And on the 10th day of January, 1876, the said Peter McNamara, for a valuable consideration, executed to your petitioner another power of attorney, authorizing him to receive and receipt for all money, bonds, and certificates that might become due him under contract No. 415 or any extension thereof. Said powers of attorney were filed by your petitioner in the office of the said Commissioners of the District of Columbia, and, as he believes, still remain there on file, and copies of each of them are filed herewith as part hereof, marked respectively, "H," "I," "K," and "L."

25 Fourteenth. Your petitioner further shows that the said assignment and power of attorney, mentioned in the twelfth paragraph of this petition, and the powers of attorney mentioned in the thirteenth paragraph thereof, were each and all made and executed by the said Peter McNamara for a valuable consideration paid and furnished by your petitioner to the said McNamara. And he further says that the consideration so paid by him was large sums of money, furnished and advanced by your petitioner from time to time as the work progressed, to enable said McNamara to perform the work and furnish the material required and stipulated in the contracts and extensions thereof; and the said money so furnished and advanced by your petitioner to said McNamara, amounted in the aggregate to many thousand dollars, and was actually used by the said McMamara in the execution and performance of said work; that the said assignment and powers of attorney were given to your petitioner to secure to him the repayment of the money so advanced by him, and to enable him to collect from the said District and reimburse himself for the money so advanced by him from time to time; that your petitioner, by virtue of the said assignment and powers of attorney, collected and received large sums from the Commissioners of the said District, for and on account of the said work done by the said McNamara under the contracts and extensions aforesaid, but there is still due him a large sum of money, on account of advances so made by him to the said McNamara to enable him to do the work mentioned in said contracts and extensions, and for which the said defendant still owes the said McNamara the sums hereinbefore mentioned. He is informed and believes, and so represents, that the instrument mentioned in the twelfth paragraph of this peti-

26 tion and filed herewith as Exhibit "G" is an absolute assignment to him, and confers upon him the right to collect and receive from the said District all money, bonds, certificates, or other evidence of indebtedness due from the said District on account of any and all work done by the said McNamara under the provisions of contract No. 415 as they originally were or as they were afterwards extended. That all the work the payment for which is claimed in this petition was done under said contract 415 and the said extension thereof, and the said letter filed herewith, except the sum of $262.21 retained, which petitioner is entitled to collect by virtue of the powers of attorney marked Exhibits "H" and "I." That those two powers of attorney, as well as the two marked Exhibits "K" and "L," were made and given for a valuable and valid consideration, and are therefore irrevocable until the purposes for which they were given are accomplished. That the said McNamara never

attempted to revoke them in his lifetime, and they are not revoked by the mere fact of his death, as your petitioner is informed and believes.

Fifteenth. That the work hereinbefore mentioned, done by the said McNamara, was well done in accordance with the terms of the said contracts, under the direction and supervision of the officers and agents of the said defendant, and was necessary and beneficial to the said District, and was accepted by its officers and agents, and has been used and still is in use by it.

Sixteenth. That by virtue of the premises aforesaid your petitioner claims judgment against the said District for the sum of six thousand nine hundred and thirty-two dollars and fifteen cents ($6,932.15), with interest on $196.95 from the 24th day of December, 1875; on
27 $262.21 from the 19th day of January, 1876; on $2,260.15 from the 22d day of January, 1876, and on $4,212.84 from the 14th day of December, 1876.

Seventeenth. That there has been no final settlement between the said McNamara or your petitioner and said District for the work done by said McNamara as aforesaid; and that no part of your petitioner's claim as herein set forth has been rejected by the late board of audit, created by section six of the act of Congress approved June 20th, 1874.

Eighteenth. That neither said contracts nor said claims for said work have been transferred or assigned to any person or persons by your petitioner, but the right to the same remains in your petitioner, and that he is justly entitled to the amount herein claimed, viz: Six thousand nine hundred and seventy-four dollars and fifty cents ($6,974.50).

Nineteenth. And your petitioner further avers that he has at all times borne true allegience to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, and believes the facts as stated in said petition to be true.

Prayer.

First. Your petitioner therefore prays for judgment in due form of law against the said District of Columbia for the said sum of six thousand nine hundred and thirty-two dollars and fifteen cents ($6,932.15), with interest thereon as aforesaid.

Second. That the said District of Columbia may be required, by a proper order, to furnish the petitioner with all books, records, contracts, measurements, vouchers, settlements, or other memoranda in its
28 possession relating to said contracts, and the work done thereunder, and the extra work done in connection therewith which may be necessary for a fair and proper adjudication of his said claim.

Third. And he prays for such other further and general relief as he may be entitled to.

THEODORE SHECKELS.
WILLIAM A. COOK,
Att'y for Pet'r.

DISTRICT OF COLUMBIA,
Washington County, to wit:

Theodore Sheckels, being duly sworn, says upon oath that he has heard the foregoing petition read, and knows the contents thereof, and that the matters therein set forth upon his own knowledge are true, and those upon information and belief he believes to be true.

THEODORE SHECKELS.

Subscribed and sworn to before me this 15th day of December, 1880.

[SEAL.]

MARION DORIAN,
Notary Public.

WILLIAM A. COOK,
Att'y for Pet'r.

"EXHIBIT A."

This contract, made and concluded this twenty-fourth day of July, in the year one thousand eight hundred and seventy-two, by and
29 between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, A. B. Mullett, and I. P. Brown, constituting and composing the board of public works of the District of Columbia, of the first part, and Peter McNamara, of Washington, D. C., of the second part, witnesseth:

First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed, to furnish at his own proper cost and expense all the necessary materials and labor, and in a good, firm, and substantial manner to grade C street north, between Fourth and Fifteenth streets east, and D street north, between Fourth and Fifteenth streets east, in the city of Washington, D. C., the said grading to be done and completed in accordance in every respect with the specifications following, to wit:

BOARD OF PUBLIC WORKS,
District of Columbia.

SPECIFICATIONS FOR GRADING STREETS, &C.

The base of excavation, including the sidewalks, will be feet wide. The roadbed proper will be feet between curbs, and must be graded to inches below the level of the curb at the centre of the street and inches below the level of the curb at the side, leaving the roadbed a fall of inches from the centre to the sides.

The material obtained in grading will be deposited where directed by the chief engineer of the board of public works, and no sand, gravel, cobble stones, curb bricks, or pipe obtained in the excavation or
30 found on the premises shall be considered the property of the party of the second part, nor used by him or them, except as hereinafter prescribed.

The filling must be done in layers not exceeding eighteen inches in thickness, so that the same may be well compressed by the driving of the carts over it.

The excavations will include only the roadbed, sidewalks, and the slope from them to the building line, according to the grade to be given by the chief engineer of the board of public works.

No more grading must be commenced at any one time than one square, except by permission of the chief engineer; and the filling must be brought up to grade established and shown by plans before the work can be accepted as completed.

In the allowance for hauling, the length of the haul over two hundred feet, and the amount of material hauled, will be determined on an average basis by the chief engineer of the board of public works, whose decision shall be final. All materials—such as curb, cobble, brick, &c.—removed from the premises and deposited under the directions of the chief engineer will be paid for at the rates for hauling established by the board of public works.

All measurements will be made in the excavation only.

Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by said party deemed proper to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

31 Third. It is further agreed that the work under this contract shall be commenced on or before the twenty-ninth day of July, one thousand eight hundred and seventy-two.

Fourth. It is further agreed that the said party of the first part may, on notice to the party of the second part, suspend work under this contract, but if not suspended, it shall be completed within (90) ninety days from the date fixed for its commencement, and that the said work shall be sublet without the consent in writing of the said party of the first part, and that any subletting or assignment, without such consent, shall work a forfeiture of this contract.

Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is willfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due to the said party of the second part, under and by virtue of this agreement, or any part thereof; and in case such expense less is than the sum which would have

32 been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference; and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals' property, or otherwise on the line of the work or adjacent thereto, shall be sustained by the contractor.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him or work under this contract in cash current, and not in what is denominated store pay or orders, and that he will from time to time, and as often as may be required by said party of the first part, furnish said party satisfactory evidence that all persons who have done work or furnished materials have been paid, as herein required. And if such evidence is not furnished, such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payment shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the board of public works, aforesaid, and that whenever the said chief engineer aforesaid shall certify in writing that the party of the second part has completely performed this contract on his part, and shall submit with said
33 certificate his estimate of the amount due the party of the second part, then, within thirty (30) days as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made as hereinafter mentioned.

And it is further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said engineer as hereinbefore provided, and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract: Provided, That partial payments may be made, under direction of said party of the first part, otherwise than upon the estimates of the said engineer as provided above, if, in the opinion of the said party of the first part, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of from the completion of the work to be done under this contract, any part or parts thereof shall become defective from imperfect or improper material or construction, and in the opinion of the said party of the first part require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the
34 same to the satisfaction of the party of the first part, and in case of a failure or neglect of the said party of the second part so to do, the same shall be done under the directions and orders of the party of the first part at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement and in all respects completing the same, to wit: Grading, thirty (30) cents per cubic yard, which shall include the first two hundred (200) feet of hauling, and for every additional two hundred (200) feet of hauling one (1) cent per cubic yard. Which said sums or prices the said party of the first part shall pay to the said party of the second part as herein provided.

Eleventh. It is further agreed that the measurement shall be made by the engineer of the said party of the first part or his assistants.

Twelfth. And the said party constituting and composing the board of public works in and for the District of Columbia aforesaid agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay or cause to be paid to the said party of the second part or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

Thirteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to the
35 said contract, and also to any law of the District of Columbia pertinent thereto or any part thereof, as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

H. D. COOKE, [L. S.]
ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
A. B. MULLETT, [L. S.]
Board of Public Works, District of Columbia,
PETER MCNAMARA,
Contractors.

Signed and sealed in presence of—
WM. C. NOTT,
JOHN A. HURLEY.

EXHIBIT "B."

Extension of contract No. 415.

It is hereby agreed by and between the Commissioners of the District of Columbia and Peter McNamara that contract No. 415 in the series of contracts made by the board of public works of the District of Columbia shall be extended, with its various terms, conditions, and stipulations (except as respects the time of execution), to embrace an amount of grading upon Eighth, Ninth, and Tenth streets east, between Maryland avenue and C street north, or as much and upon so many of these streets as may be necessary to make an amount of grading equivalent to that relinquished on C and D streets northeast on account of change

36 of grade. And the engineer of the District of Columbia shall determine what amount of grading will be an equivalent amount of work as contemplated by this agreement.

It is further agreed that the said Peter McNamara shall receive the prices stipulated to be paid in said contract No. 415, provided that he shall accept and receive at the par value thereof payment in the bonds issued by the sinking fund commissioners of the District of Columbia, under and by virtue of section 7 of the act of Congress approved June 20th, 1874.

Also the said Peter McNamara shall reset the curbs, and relay the brick foot pavements on the line of work described herein at the prices paid by the board of public works for similar work; payment to be made in the hereinbefore-mentioned bonds at their par value.

In witness whereof the said District of Columbia has caused this instrument to be signed by the Commissioners of said District appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and the common seal of said District to be hereto affixed; and the party of the second part to these presents has hereunto set his hand and seal this third day of April, 1875.

W. DENNISON, [L. S.]
J. W. KETCHUM, [L. S.]
S. L. PHELPS, [L. S.]
Commissioners of the Dist. of Col.
PETER MCNAMARA. [SEAL.]

Signed and sealed in the presence of—
WM. A. BROWN.
GEO. F. HOWARD.

37 EXHIBIT "C."

The District of Columbia to Peter McNamara, Dr.

To	787.20 square yards new brick pavement laid, at 1.00	$787.20
	354.93 square yards new cobblestone pavement laid, at .70	248.45
	615.40 running feet 5 in. bluestone curb and setting, at 1.20	738.48
	14.1 running feet granite circular curb and setting, at 2.05	28.90
	1,017.48 cubic yards grading, at .30	305.24
	1,017.48 cubic yards haul, 1,963 feet over 200 feet, at .2454	249.69
	289.33 square feet flag walk, at 60c. per foot	173.59
		$2,531.55

28.

No. 413, Vol. A, 1876.
E. O., D. C.

38 WASHINGTON, D. C., *Dec. 14th, 1876.*

TO THE HONORABLE THE COMMISSIONERS OF THE D. C.

GENTS: In compliance with your instructions contained in your endorsement of September 18th, 1876, upon letter of auditor of D. C., dated September 1, 1876 (6025 E. O., 1876), I transmit herewith final measurement of work done on D street, between 10th and 12th street' NE., by Peter McNamara, under contract No. 415, of the late board of public works, amounting to $2,531.55.

Very respectfully,

R. L. HOXIE,
Lieut. Engineer, U. S. A., and Engineer of D. C.

Respectfully referred to the auditor of D. C. By order:

WM. TINDALL, *Sec'y.*

DEC. 16, 1876.

39 EXHIBIT "D."

The District of Columbia to Peter McNamara, Dr.

To	189.33	square yards new brick pavement laid, at 100....	$189. 33
	225.33	square yards old brick pavement laid, at 25.....	58. 83
	183.10	square yards new cobblestone laid, at 70.....	128. 17
	180.67	square feet flagging for crossing laid, at 60.....	108. 40
	278.60	running feet 5 in. new bluestone curb and setting, at 1.20.....	334. 32
	191.30	running feet 5 in. bluestone curb reset, at 25.....	47. 82
	302	running feet 4 in. bluestone curb reset, at 15.....	45. 30
	9.4	running feet granite circular curb and setting, at 305	19. 27
	193.60	running feet 12 in. new gutter flag laid, at 35....	67. 76
	1,200	cubic yards grading, at 30.....	360. 00
	1,200	cubic yards haul, 1,490 feet over 200, at 18.62...	233. 44
	493.30	lineal feet curb redressed and jointed, at 20.....	98. 65
			$1, 681. 29

This is in addition to former measurements, signed B. O.
Approved Oct. 18, 1876.

B. OESTLY, *Ass't Engineer.*

Approved subject to future inspection of work Dec. 14, 1876.

R. L. HOXIE, *Engineer.*

40 *Letter of transmittal.*

E. O., D. C., WASHINGTON, D. C., *Dec. 14th, 1876.*

TO THE HONORABLES THE COMMISSIONERS OF D. C.

GENTS: In compliance with your instructions contained in your endorsement of September 13th, 1876, upon letter of auditor of D. C., dated September 1, 1876 (6025, E. O., 1876), I transmit herewith final measurement of work done on 9th street NE., between 6th and Maryland

avenue, by Peter McNamara, under contract No. 415 of late board of public works, amounting to $1,681.29.

Very respectfully,

R. L. HOXIE,
Lieut. Engineer, U. S. A., and Engineer D. C.

Respectfully referred to auditor. By order:

WM. TINDALL, *Secretary.*

DEC. 16, 1876.

EXHIBIT "E."

ENGINEER'S OFFICE, DISTRICT OF COLUMBIA,
Washington, Nov. 6th, 1875.

PETER MCNAMARA, Esq., *City.*

SIR: You are authorized to move out the curb and relay the foot walk on the west side of 7th street, from East Capitol to South A streets, as extra work under your contract No. 415 with the late board of public work, provided the work is done at board rates and you accept 3.65 bonds at par in payment therefor.

By order of the Commissioners of D. C.:

(Signed) R. L. HOXIE,
Lieut. Engineers, U. S. A., and Engineer of D. C.

41 EXHIBIT "F."

The District of Columbia to Peter McNamara, Dr.

To	756.31	square yards new brick pavement laid, at 1.00	$756.31
	190.70	square yards new cobblestone pavement laid, at .70	133.49
	572	running feet 5-in. bluestone reset, at .25	143.50
	286	running feet 11-in. gutter flag laid, at .35	100.10
	286	running feet 16-in. new gutter flag laid, at .48	137.28
	1,072	cubic yards grading, at .40	428.80
	1,072	cubic yards haul 4,700 feet over 200 feet, .5875	629.80
	772.20	square yards of grading, at .15	115.83
			$2,444.61
		Deduct for 100 loads of sand and gravel obtained from streets	8.00
		Total measurement	$2,436.61
		Deduct property	176.46
			$2,260.15
		Retain	37.81
			$2,222.34

Approved January 22d, 1876.

B. OESTLEY,
For Lt. Eng's, U. S. A., and Eng. for D. C.

42 EXHIBIT "G."

WASHINGTON, *Nov. 5th, 1874.*

This is to certify that for and in consideration of Theodore Sheckels having this day advanced me five hundred dollars, for which he holds my promissory note dated November 5th, 1874, with ten per cent per annum interest, and payable ninety days after date; and in consideration of other and further advances that may be made to me by the said Sheckles; and as I am desirous to secure to the said Sheckels the payment of such note and interest, and all other advances he may make to me, I have this day transferred and assigned, sold, and set over unto the said Sheckels, all my right, title, and interest in and to any claim that I now have or that I may hereafter have against the District of Columbia, and all interest that I may have in any and all bonds, certificates, or other form of indebtedness that may be issued by the District of Columbia, or in any money that may become due and payable to me under contract No. 415, for the grading of C and D streets north, between Fourth and Fifteenth streets east, for work done or that may hereafter be done by me, for the purpose of paying the said Sheckels the above-named note, as also any and all monies that he, the said Sheckels, may advance to me from time to time as the work progresses up to the completion of said streets, as will appear by notes, due bills, or other evidences of indebtedness due to said Sheckels by me when the said streets shall be completed; and for value received I hereby irrevocably constitute and appoint Theodore Sheckels, of the city of Washington and District of Columbia, my true and lawful attorney for me, and in my
43 name and in my behalf to ask, demand, and receive of and from the District of Columbia or the proper officers thereof all such sum or sums of money, certificates, or evidences of debts whatsoever, which are now due or may hereafter become due and owing to me by the District of Columbia under my contract for the grading of C and D streets north, between Fourth and Fifteenth streets east, and to have, use, and take all lawful ways and means in my name or otherwise for the recovery thereof and acquittances or other sufficient discharge for the same for me and in my name to make, seal, and deliver, and to do all other lawful acts and things whatsoever concerning the premises as fully in every respect as I myself might or could do were I personally present at the doing thereof, and attorneys, one or more, under him for the purpose aforesaid to make, and again at his pleasure to revoke, ratifying and confirming, and by these presents allowing whatsoever my said attorney shall in my name lawfully do or cause to be done in and about the premises by virtue of these presents.

(Signed) PETER MCNAMARA.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Personally appeared before me Peter McNamara and acknowledged the above power of attorney to be his act and deed.

Witness my hand and notarial seal this 5th day of November, 1874.

(Signed) JAS. A. TAIT,
Notary Public.

44 EXHIBIT "H."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington and District of Columbia, for and in consideration of a certain interest in the extension of contract number seventeen hundred and sixteen, entered into on the by and between the Commissioners of the District of Columbia, appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, to grade, reset the old curb, and to furnish new curb and set the same where necessary, lay brick foot walks, to lower water mains, to put in water services, and McAdamize the carriageway of 6th street east, between Pennsylvania avenue and K street southeast. I do hereby authorize, empower, and appoint Theodore Sheckels, of the city, county, and District aforesaid, my true and lawful attorney for me, and in my name to collect and receipt for all money, certificates, or bonds that may become due me for work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the board of audit appointed under the act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this day of October, A. D. 1875.

(Signed) PETER MCNAMARA. [SEAL.]

Witness,

(Signed) A. G. STONE.

45 CITY AND COUNTY OF WASHINGTON,
District of Columbia, ss:

On this sixteenth day of October, A. D. 1875, before me, the subscriber, a notary public in and for the city, county, and District aforesaid, personally appeared Peter McNamara, well known to me to be the party who acknowledged the foregoing power of attorney to be his act and deed, and desired that the same might be recorded as such according to law.

Witness my hand and seal the day and year above written.

[NOTARIAL SEAL.] (Signed) A. G. STONE,
Notary Public.

EXHIBIT "I."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington and District of Columbia, for and in consideration of a certain interest in the extension of contract number seven hundred and sixteen, entered into on the by and between the Commissioners of the District of Columbia, appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, to grade, reset the old curb, and to furnish new curb, and set the same where necessary, lay brick footwalks, &c., and the further orders to McAdamize the carriageway of 6th street east, between Pennsylvania avenue and K street southeast, I do hereby authorize, empower,
46 and appoint Theodore Sheckels, of the city, county, and District aforesaid, my true and lawful attorney, for me and in my name to

collect and receipt for all monies, certificates, or bonds that may become due me for all work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the board of audit appointed under the act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 22d day of December, A. D. 1875.

(Signed) PETER MCNAMARA. [SEAL.]

Witness:

(Signed) A. G. STONE.

Sworn and subscribed to before me this 22d day of December, A. D. 1875.

(Signed) A. G. STONE,
Notary Public.

EXHIBIT "K."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington and District of Columbia, for and in consideration of a certain interest in the extension of contract number four hundred and fifteen, entered into on the twenty-second day of October, 1875, by and between the Commissioners of the District of Columbia, appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, to grade, gravel, pave, and curb the footwalks and carriageway of A street, between 3d and 9th streets SE.,
47 I do hereby authorize, empower, and appoint Theodore Sheckels, of the city, county, and District aforesaid, my true and lawful attorney, for me and in my name to collect and receipt for me all money, certificates, or bonds that may become due me for work done under the extension aforesaid from the Commissioners of the District of Columbia, or from the board of audit appointed under the act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 22d day of December, A. D. 1875.

(Signed) PETER MCNAMARA. [SEAL.]

Witness:

A. G. STONE.

Sworn and subscribed to before me this 22d day of December, A. D. 1875.

(Signed) A. G. STONE, [NOTARIAL SEAL.]
Notary Public.

EXHIBIT "L."

Know all men by these presents, that I, Peter McNamara, of the city and county of Washington and District of Columbia, for and in consideration of a certain interest in the extension of contract (No. 415) number four hundred and fifteen, entered into on the by and

between the Commissioners of the District of Columbia, appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, and myself, for grading, paving, setting curb, &c., I do hereby authorize, empower, and appoint Theodore Sheckels, of the city, county, and District aforesaid, my true and lawful attorney, for me and in my name to collect and receipt for moneys, certificates, or bonds that may become due for work done under contract number four hundred and fifteen (415), or any extension thereto, from the Commissioners of the District of Columbia, or from the board of audit appointed under the act aforesaid, and this power not to be revoked, except by mutual consent, until the final completion of the work aforesaid, and to do all lawful acts appertaining thereto.

Witness my hand and seal this 10th day of January, A. D. 1876.

(Signed) PETER MCNAMARA. [SEAL.]

Wit'esses:

A. G. STONE.

A. KELSEY.

Acknowl'ed and subscribed to before me this 10th day of January, A. D. 1876.

(Signed) A. G. STONE, [NOTARIAL SEAL.]
Notary Public.

48 VI. *Traverse.—Filed February 11, 1882. No. 292, D. C.*

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

VII. *Order to consolidate cases.*

On the second day of January, 1883, the court ordered that the motion of the defendant to consolidate these cases be allowed by consent of parties.

BY THE COURT.

49 VIII. *Plea and bill of particulars filed by defendant November 7, 1884, in Nos. 251, 252, and 292, D. C., consolidated.*

Now comes the Attorney-General on behalf of the District of Columbia, and for a further plea says:

That at and before the institution of this suit, and at and before the alleged assignments from Peter McNamara to Theodore Sheckles, the said Peter McNamara was and still is indebted unto the District of Columbia in the full and just sum of fifty-two thousand nine hundred and twelve dollars and sixty-four cents, for money had and received to the use of the defendant, and the said Peter McNamara, the testator of the claimant McNamara, and the assignor of the claimant Sheckles, being so indebted as aforesaid, in consideration thereof promised to pay the defendant the

said sum of money on request; yet the said McNamara and the said claimants, although often requested so to do, have not, nor has anyone in their behalf as yet paid the said sum, or any part thereof, but have wholly neglected and refused, and still neglect and refuse so to do; which said sum so due as aforesaid the defendant claims to set off against the demand of the claimants, and thereupon brings his counterclaim.

THOMAS SIMONS,
Assistant Attorney-General.

BILL OF PARTICULARS OF SET-OFF.

To amounts paid Peter McNamara in excess of contract rates, viz:

Under contract 248. (File No. 1, page .)

(File 64, page .) To amount overpaid by the auditor of the board of public works for grading and haul on Penn'a ave. SE.	
40,002 cubic yards excavation allowed at 40c. per yard, in lieu of 30c. contract rate; excess, 10c. per yard on 40,002 yards.	$4,000.20
72,216 cubic yards hauled 3,900 feet, over 200 feet allowed at 48¾ cents per yard, in lieu of 18½ cents per yard; excess, 30¼ cents per yard on 72,216 yards	21,845.34

50 *By the board of audit.*

(File 68, page .) 3,234 cubic yards, hauled 3,900 feet, over 200 feet allowed at 48¾ cents per yard, in lieu of 18½ cents; excess, 30¼ cents per yard on 3,234 cubic yards.	1,051.32

Contract No. 415. (File 2, page .)

To amount overpaid by the board of audit on grading and haul, as follows:	
On C street NE., between 4th and 15th streets (File 51, page). To 8,321 cubic yards grading, allowed at 40c. per yard, in lieu of 30c., the contract rate; excess, 10 cents per yard on 8,321 yards	832.10
28,758.7 cubic yards hauled 1,316 feet, over 200 feet allowed at 16.4 cents per yard in lieu of 6.5 cents, the contract rate; excess, 9.8 cents per yard on 28,758 yards	2,818.28
On D street NE., between 4th and 15th streets (File 48, page), 57,788.55 cubic yards hauled 2,083 feet, over 200 feet allowed at 26.04 cents per yard in lieu of 10.41 cents, contract rate; excess, 15.6 cents per yard on 57,788 yards	9,014.92

Extension of contract 415, of April 3, 1875.

File 3, page .) On 9th street NE., bet. C st. and Md. ave., on 3,005 cubic yards grading allowed at 40c. per yard in lieu of 30c., contract rate; excess, 10 cents per yard on 3,005 yards	300.50

10,412 cubic yards hauled 2,018 feet, over 200 feet allowed at 25.22 cents per yard in lieu of 10 cents per yard, contract rate; excess, 15c. per yard on 10,412 yards $1,561.80

Contract 515. (*Filed by defdt., p. .*)

(File 77, p. ; Nichols avenue:
To amount allowed by board of audit upon grading and haul in excess of contract price 2,282.94

Contract 716. (*File 9, p. 38.*)

To amount overpaid on grading and on hauling by the board of audit.
(File 40, p. 45.) On Sixth st. SE.:
691 cubic yards excavation allowed at 40c. per yard in lieu of 30c. per yard, contract rate; excess, 10c. per yd 69.20
11,799 cubic yards hauled 883 feet, over 200 feet allowed at 11.03 cents per yard in lieu of 4.40 cents per yard, contract rate; excess, 6.6 cents per yard 781.09
Deduct $262.21 retain, leaves net overpaym't .. 622.21
518.88
To amount overpaid on grading and hauling by the auditor of the board of public works.....
(File 37, p. .) On Sixth street SE.:
8,797 cubic yards grading allowed at 40c. in lieu of 30c., contract rate; excess, 10c. per yd 879.70
15,834 cubic yards hauled 1,800 feet, over 200 feet allowed at 22½ cents per yard in lieu of 9 cents per yard, the contract rate; excess, 13½ cents per yard on 15,834 yards.. 2,137.59

Contract 926. (*Filed by def't, p. .*)

To amount overpaid by board of audit on grading and graveling on Good Hope Road.....
(File 80, p. .) 9,552.48 cubic yards excavation, allowed at 60 cents per yard in lieu of 30 cents, contract price; excess, 30 cents per yard 2,865.75
To this amount allowed for hauling gravel (to wit, 21,878 yards, at 12½ cents per yard) in excess of contract price, the hauling being included in the price of graveling.... 2,734.12

Total $52,912.64

THOMAS SIMONS,
Assistant Attorney-General.

51 IX. *Substitution of administrator de bonis non cum testamento annexo, in D. C. 251 and 252.*

JOHANNA MCNAMARA, EXECUTRIX OF THE will of Peter McNamara, deceased,
vs.
THE DISTRICT OF COLUMBIA. } Nos. 251 and 252.

And now comes John J. Johnson, the attorney of record in the above entitled cases, and now here suggests to the court the death of the claimant, Johanna McNamara, and that George E. Johnson, administrator de bonis non cum testamento annexo, be substituted as claimant, in the place and stead of said Johanna McNamara, deceased. Letters of appointment as administrator de bonis non cum testamento annexo of said Johnson by the supreme court of the District of Columbia, holding a special term for orphan's court business, hereto attached.

Filed October 28, 1895.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

52 X. *Suggestion of death of claimant and substitution of executrices in D. C. 292.*

THEODORE SHECKELS,
vs.
THE DISTRICT OF COLUMBIA. } No. 292.

And now comes W. L. Cole, attorney for claimant in the above case, No. 292, and suggests the death of Theodore Sheckels, the claimant in said case, and moves the court to revive said case in the names of Margaret R. Sheckels, Helen C. Sheckels, and Mary M. D. Sheckels, executrices of the last will and testament of said Theodore Sheckels, said motion being supported by a certified copy of letters testamentary granted to said executrices by the supreme court of the District of Columbia on the 3rd day of January, A. D. 1896.

W. L. COLE,
Attorney for Claimant.

Filed January 8, 1896.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

53 XI. *Findings of fact and conclusions of law. Filed June 22, 1896*

These cases having been heard before the Court of Claims, the court on the evidence makes the following

FINDINGS OF FACT.

I.

Peter McNamara had several contracts with the defendant, through the late corporation of Washington, the late board of public works, and

the Commissioners of the District of Columbia, by extensions thereof, for work and materials, being a certain contract with the corporation of Washington and contracts with the board of public works numbered 415 and extensions thereof, 515, 716 and extensions thereof, and 850.

II.

These actions, originally brought under the act of June 6, 1880 (21 Stat. L., 284), on said contracts, were consolidated and tried together before a referee, who, after stating the accounts, found and reported, June 8, 1891, as due from defendant under said contracts for work, at contract rates, as follows:

I find due the claimants under the several contracts mentioned in cases 251 and 292 the following sums, viz:

I. Under old corporation contract	$5,119.36
II. Under contract No. 515	1,065.06
III. Under contract No. 850	1.00
IV. Under contract No. 716 and extensions	1,189.31
V. Under contract No. 415 and extensions	7,044.04
Total	14,418.77

I further report that the sum of $5,119.36 of the above amount was due and payable as of February 1, 1872, and that the remaining portion, $9,299.41, was due and payable as of April 1, 1876.

The amount assigned to S. J. Ritchie, $927.10, is included in amount found to be due under contract No. 716 and extensions.

The amount claimed by Theodore Sheckels is included in amount found to be due under contracts 415, 716 and extensions.

In conclusion, I find that in the whole the defendant is entitled to recover of the claimant, McNamara, the sum of $6,694.41, with interest from June 1, 1874.

54 III.

ASSIGNMENTS.

The referee found that said McNamara had made an assignment to said Theodore Sheckels, deceased, of $7,306.25 of said amounts due from defendant, and an assignment to Samuel J. Ritchie (not a claimant in these cases) of $927.10 of said amounts due from the defendant, leaving a balance due to the estate of said McNamara of $6,183.42.

IV.

COUNTERCLAIM.

Said referee also reported that the accounts stated by him were at contract rates for the work done, and not at rates established and paid by the board of public works; and that on a certain other contract between said McNamara and the board of public works, being contract No. 248, said McNamara had been paid at board rates to the amount of $6,694.41 in excess of amount due at contract rates, which excess was due to the defendant as a counterclaim, with interest from June 1, 1874.

V.

EXCEPTIONS TO THE REPORT.

The claimants except to the report as to the whole finding for the defendant on said counterclaim, both as to principal and interest. The defendant takes no exception to said report, and the same is otherwise adopted as the findings of the court.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides as conclusions of law that—

1. Under the act of February 13, 1895, the claimant's exception is well taken and must be sustained, and the finding of the referee in relation to the counterclaim as to both principal and interest must be overruled.

2. The administrator of McNamara is entitled to recover the sum of $5,119.36, as due and payable February 1, 1872, and the sum of $1,066.06, as due and payable April 1, 1876, within the intent and meaning of said acts of February 13, 1895, and June 6, 1880.

3. The executrices of Theodore Sheckels are entitled to recover the sum of $7,306.25, as due and payable April 1, 1876, within the intent and meaning of said acts.

55 XII. *Opinion of the court.*

RICHARDSON, CH. J., delivered the opinion of the court:

The decision of these cases turns upon the exception of the claimants to the finding of the referee that the defendant was entitled to recover on the counterclaim with interest from June 1, 1874, as set out in the findings.

The counterclaim arose upon the facts found that McNamara, the contractor, had been paid for his work at "board rates," to which this court in several cases and the Supreme Court on appeal had decided contractors were not entitled above contract rates. (Roche's Case, 18 C. Cls. R., 217; Barnard Case, 20 C. Cls. R., 257, and 127 U. S. R., 409; Barnes Case, 22 C. Cls. R. 366; Eslin Case, 22 C. Cls. R., 395, and 29 C. Cls. R., 370.)

The finding as to the amount of counterclaim was correct when the report was made according to those decisions, but Congress, since the report, by the act of February 13, 1895 (28 Stat. L., 664), has required this court to allow the rates established and paid by the board of public works to all claimants, under the former District of Columbia Claims Act (1880, June 16, 21 Stat. L. 284).

The act of February 13, 1895, sets aside those decisions and this counterclaim, reverses the finding of the referee, and leaves nothing for the court to do but to obey its command.

But the referee reports that the defendant is entitled to interest thereon from June 1, 1874, and it is urged for the defendant that this is correct now and that the counterclaim should draw interest from the time the money was paid as reported by the referee, because it was a legal and valid counterclaim until the passage of said act of February 13, 1895.

We can not concur in the contention of the defendant. In the case of Pacific Railroad v. United States (158 U. S. R., 118) the Supreme Court decided that when the principal of a debt is extinguished by payment the interest is also extinguished. This rule of law applies with equal force when the principal is extinguished by act of Congress, and that part of the referee's report is not adopted.

The administrator of McNamara will have judgment for $5,119.36 as due and payable February 1, 1872, and $1,066 as due and payable April 1, 1876, within the intent and meaning of the acts of February 13, 1895, and June 6, 1880. The executrices of Theodore Sheckels will have judgment for $7,306.25, as due and payable April 1, 1876, within the intent and meaning of said acts.

56 XIII. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the 22d day of June, A. D. 1896, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant and do order, adjudge, and decree that the said George E. Johnson, administrator de bonis non cum testamento annexo of Peter McNamara, deceased, do have and recover in the manner provided by the act of June 16, 1880, and the act of February 13, 1895, five thousand one hundred and nineteen dollars and thirty-six cents ($5,119.36) upon debts of the District of Columbia due and payable February 1st, 1872, and one thousand and sixty-six dollars ($1,066) upon debts of the District of Columbia due and payable April 1st, 1876, within the intent and meaning of the said acts.

BY THE COURT.

And—

At a Court of Claims held in the city of Washington on the 22d day of June, A. D. 1896, judgment was further ordered as follows:

57 The court on due consideration of the premises find for the claimants and do order, adjudge, and decree that the said Margaret R. Sheckels, Helen C. Sheckels, and Mary M. D. Sheckels, executrices of the will of Theodore Sheckels, deceased, do have and recover in the manner provided by the act of June 16, 1880, and the act of February 13, 1895, the sum of seven thousand three hundred and six dollars and twenty-five cents ($7,306.25) upon debts of the District of Columbia due and payable April 1st, 1876, within the intent and meaning of said acts.

BY THE COURT.

58 *Application of defendant for and allowance of appeal.*

GEORGE E. JOHNSON, ADMR. D. B. N. C. T. A. OF Peter McNamara, deceased, *vs.* THE DISTRICT OF COLUMBIA. } Nos. 251 and 252.

MARGARET R. SHECKELS, HELEN C. SHECKELS, AND Mary M. D. Sheckels, executrices of Theodore Sheckels, deceased, *vs.* THE DISTRICT OF COLUMBIA. } No. 292.

From the judgment rendered in the above-entitled causes, consolidated, on the 22d day of June, 1896, in favor of claimants, the defendant, by the Attorney-General, on the 3d day of September, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Assistant Atty. General.

Filed September 3, 1896.

Allowed in vacation, September 4, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

59 In the Court of Claims.

GEORGE E. JOHNSON, ADMR. D. B. N. C. t. a. of Peter McNamara, deceased, *vs.* THE DISTRICT OF COLUMBIA. } Nos. 251 and 252.

and

MARGARET R. SHECKELS, HELEN C. Sheckels, and Mary M. D. Sheckels, executrices of Theodore Sheckels, deceased, *vs.* THE DISTRICT OF COLUMBIA. } No. 292.

} Consolidated.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above consolidated causes, of the findings of fact by the court, of the conclusions of law thereon, of the opinion of the court, of the judgment of the court, of the application of the defendant for allowance of appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City this 11th day of September, A. D. 1896.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Term No., 617. The District of Columbia, appellant, vs. George E. Johnson, administrator, &c., of Peter McNamara, deceased. Case No. 16396. Court of Claims. Term No., 618. The District of Columbia, appellant, vs. Margaret R. Sheckels, Helen C. Sheckels, and Mary M. D. Sheckels, executrices of Theodore Sheckels, deceased. Case No. 16397. Filed October 6th, 1896.

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65-330 & 340 & 341

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165-330 & 340 & 341

In the Supreme Court of the United States.

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
GEORGE E. JOHNSON, ADMINISTRATOR OF Peter McNamara, deceased. } No. 617.

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
MARGARET R. SHECKELS, HELEN C. SHECKELS, and Mary M. D. Sheckels, executrices of Theodore Sheckels, deceased. } No. 618.

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
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THE DISTRICT OF COLUMBIA, APPELLANT,
v.
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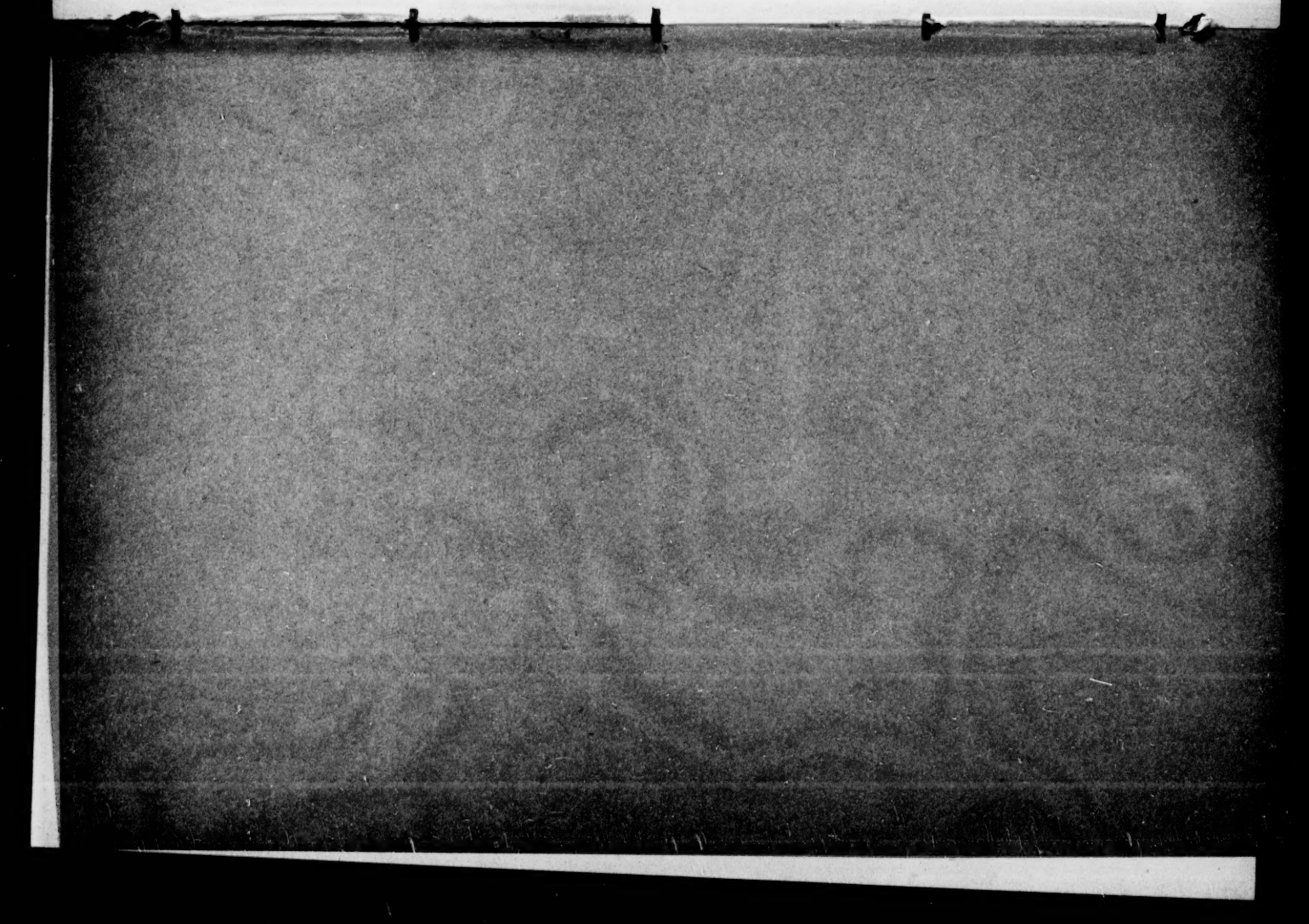

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MOTION TO ADVANCE.

These cases involve the same question, which may be briefly stated as follows:

An act of Congress approved February 13, 1895 (chap. 87, 28 Stat. L., p. 664), enacts:

> That in the adjudication of claims brought under the provisions of the act entitled "An act to provide for the settlement of all outstanding claims

> against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved the sixteenth day of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the Board of Public Works; and whenever said rates have not been allowed the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.

Under this law about one hundred cases stood for trial in the Court of Claims; some still pending, undecided, under the act of 1880, and some upon new trials, under the act of 1895. Of these about ninety cases are still in litigation, either upon appeal to this court or pending in the Court of Claims, and in all of them the matter to be determined by this court in the cases now sought to be advanced is involved.

In rendering judgments under the act of 1895 the Court of Claims construed that act as giving claimants the right to interest upon their claims from the time of the completion of their contracts (these being suits upon contracts), as though the claims could have been recovered under the act of 1880, which in practical effect allowed interest on amounts found due by the court. This court had already decided that parties had no legal right under their coutracts to the sums now granted them by the act of 1895 and awarded them by the judgments appealed. The Government accordingly contends that, as the claimants' rights are conferred by the act of 1895, there were

no debts prior thereto to draw interest. This question of construction is the one to be determined.

By these statutes the same right of appeal, by the District of Columbia, or the claimant, subject to the same rules and regulations as are prescribed by law for appeals on behalf of the United States or claimants against the United States from the judgments of the Court of Claims, is given.

It is submitted that this matter is of general public interest to the people of the District of Columbia, and is also one in which the United States is concerned, which also affects a matter of general public interest.

As other judgments have been rendered which will be appealed, and as the pending cases will probably be set for trial in the Court of Claims, it will be a relief to the dockets of both courts if an early decision is had.

The Solicitor-General therefore respectfully moves that the above-mentioned appeals may be advanced upon the docket, to be heard *as one case*, at some early day convenient to the court.

Notice of this motion is waived by attorneys for the appellees, and the motion is assented to by them.

Respectfully submitted.

HOLMES CONRAD,
Solicitor-General.

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APPELLANT'S BRIEF.

In the Supreme Court of the United States.

THE DISTRICT OF COLUMBIA, APPELLANT, *v.* GEORGE E. JOHNSON, ADMINISTRATOR OF Peter McNamara, deceased.	No. 617.
THE DISTRICT OF COLUMBIA, APPELLANT, *v.* MARGARET R. SHECKELS, HELEN C. Sheckels, and Mary M. D. Sheckels, executrices of Theodore Sheckels, deceased.	No. 618.
THE DISTRICT OF COLUMBIA, APPELLANT, *v.* JOSEPH T. H. HALL.	No. 619.
THE DISTRICT OF COLUMBIA, APPELLANT, *v.* WILLIAM M. DICKSON, ASSIGNEE OF F. H. Finley.	No. 620.

The same point is involved in each of these cases. Wherefore the appellant asks that they be heard together and that this brief be taken as the brief in each case. What differences there are in the preliminary facts are set out in the statement below and do not affect the question to be determined.

STATEMENT.

By an act of Congress approved February 21, 1871 (c. 62 16 Stat. L., 419), a government was provided for the District of Columbia. By section 18 the legislative power of the District was extended "to all rightful subjects of legislation within said District consistent with the Constitution of the United States and the provisions of this act, subject, nevertheless, to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States."

By section 15 it was provided—

> That the legislative assembly shall never grant or authorize extra compensation, fee, or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the District under any contract or agreement made, without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

By section 37 a board of public works was constituted, who—

> shall have entire control of, and make all regulations which they shall deem necessary for keeping in repair, the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the legislative assembly or Congress.
>
> They shall disburse upon their warrant all moneys appropriated by the United States, or the District of Columbia, or collected from property holders, in pursuance of law, for the improvement of streets, avenues, alleys, and sewers, and roads and bridges, and shall assess in such manner as shall be prescribed

by law, upon the property adjoining and to be especially benefited by the improvements authorized by law and made by them, a reasonable proportion of the cost of the improvement, not exceeding one-third of such cost, which sum shall be collected as all other taxes are collected. * * *

All contracts made by the said board of public works shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District.

And said board of public works shall have no power to make contracts to bind said District to the payment of any sums of money except in pursuance of appropriations made by law, and not until such appropriations shall have been made.

The legislative assembly of the District of Columbia, by act approved July 10, 1871 (Acts of First Leg. Ass. District of Columbia, Chap. X, p. 10), appropriated the sum of $4,000,000, " for the improvement and repairs of the streets, avenues, alleys, and roads in the District of Columbia, and for the construction and repairs of sewers, bridges, and other public works therein," to be used and expended according to the provisions of the act providing a government for the District.

In 1874 the provisions of law providing for the legislative assembly and the board of public works were repealed. By an act of Congress—"An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874 (18 Stat. L., 116)—this District government was abolished and another and different government provided in its stead, as follows:

SEC. 2. That the President of the United States, by and with the advice and consent of the Senate,

is hereby authorized to appoint a commission, consisting of three persons, who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the governor or board of public works of said district, except as hereinafter limited, and shall be subject to all the restrictions and limitations now imposed by law on said governor or board, and shall have power to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and to the payment of the debts of said District secured by a pledge of the securities of said District or board of public works as collateral, and also to the payment of debts due to laborers and employees of the District and board of public works; and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia and the board of public works, and exercise the power and authority aforesaid. But said commission, in the exercise of such power or authority, shall make no contract nor incur any obligation other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing or commenced and not completed at the time of the passage of this act.

* * * * *

SEC. 6. That it shall be the duty of the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States, who are hereby constituted a board of audit, to examine

and audit for settlement all the unfunded or floating debt of the District of Columbia and of the board of public works, hereinafter specified, namely: First, the debt evidenced by sewer certificates; secondly, the debt purporting to be evidenced and ascertained by certificates of the auditor of the board of public works; thirdly, the debt evidenced by the certificates of the auditor and the comptroller of the District of Columbia; fourthly, claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works; fifthly, claims, for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by or on behalf of the District of Columbia; sixthly, all claims for private property taken by the board of public works from the avenues, streets, and alleys of the cities of Washington and Georgetown; and seventhly, all unadjusted claims for damages that may have been presented to the board of public works.

* * * * *

Said board of audit shall also issue to each claimant a certificate, signed by each of said board, and countersigned by the comptroller of said District, stating the amount found to be due to each and on what account.

By the seventh section of this act it was provided—

That the sinking-fund commissioners of said District are hereby continued; and it shall be the duty of said sinking-fund commissioners to cause bonds of the District of Columbia to be prepared, in sums of fifty and five hundred dollars, bearing date August first, eighteen hundred and seventy-four, payable fifty years after date, bearing interest at the rate of three and sixty-five hundredths per centum per

annum, payable semiannually, to be signed by the secretary and the treasurer of said sinking-fund commissioners and countersigned by the comptroller of said District, and sealed as the board may direct; which bonds shall be exempt from taxation by Federal, State, or municipal authority, engraved and printed at the expense of the District of Columbia, and in form not inconsistent herewith. And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as will provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, and create a sinking fund for the payment of the principal thereof at maturity. Said bonds shall be numbered consecutively and registered in the office of the comptroller of said District, and shall also be registered in the office of the Register of the Treasury of the United States, for which last-named registration the Secretary of the Treasury shall make such provision as may be necessary. And said commissioners shall use all necessary means for the prevention of any unauthorized or fraudulent issue of any of such bonds. And the said sinking-fund commissioners are hereby authorized to exchange said bonds at par for like sums of any class of indebtedness in the preceding section of this act named, including sewer taxes or assessments paid, evidenced by certificates of the auditing board provided for in this act. (18 Stat. L., 120.)

This section was amended February 20, 1875, as follows:

That the seventh section of the act of Congress entitled "An act for the government of the District

of Columbia, and for other purposes," approved June twentieth, eighteen hundred and seventy-four, be, and the same is hereby, amended by inserting the words "do so" after the fortieth word following the first period in said section, so that it will read: "And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as will do so, provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, and create a sinking fund for the payment of the principal thereof at maturity:

Provided, That registered bonds may be issued in lieu of coupon bonds as provided in said act or exchanged for coupon bonds already issued, and the interest of all said bonds shall be payable at the Treasury of the United States. (18 Stat. L., 332.)

By a joint resolution approved March 14, 1876 (19 Stat. L., 211), Congress abolished the board of audit and forbade the further issue of bonds, as follows:

That the Commissioners of the District of Columbia are hereby directed to transfer to the Treasurer of the United States, for the payment of the interest, due the first of February, eighteen hundred and seventy-six, on the bonds of said District, issued under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, entitled "An act for the government of the District of Columbia and for other purposes," the sum necessary to pay the same from any unexpended appropriations heretofore made by Congress, or from any revenues derived by taxation on the property of said District of Columbia, subject to the requisition of said Commissioners, excluding funds raised

for the support of public schools: *Provided*, That any further issue of three-sixty-five bonds under or by virtue of said act of Congress approved June twentieth, eighteen hundred and seventy-four, is hereby prohibited: *And provided*, That the said Commissioners are hereby directed to discontinue all work and labor on streets, avenues, bridges, sewers, canals, and structures of every kind the payment for which is to be made in three-sixty-five bonds of the District of Columbia: *And provided further*, That so much of the sixth section of the said act of June twentieth, eighteen hundred and seventy-four, as directs and requires the First Comptroller of the Treasury and the Second Comptroller of the Treasury to audit and adjust the floating and unfunded debt of the District of Columbia, and issue certificates therefor, and of the joint resolution continuing the board of audit to examine and audit the unfunded or floating debt of the District of Columbia, approved December twenty-first, eighteen hundred and seventy-four, and of the act to extend the time within which the board of audit of the District of Columbia may receive, audit, and allow certain claims that have never been presented to said board, approved March third, eighteen hundred and seventy-five, be, and the same is hereby, repealed.

Of the certificates issued, there were converted into 3.65 bonds, for which the faith of the United States was pledged, as authorized by the act of 1874, the sum of $13,743,250. (See Fourth Annual Report of the Commissioners of the District of Columbia.)

There were left outstanding certificates, not converted into 3.65 bonds at the time of the passage of the joint

resolution of Congress approved March 14, 1876, prohibiting the further issue of said bonds, $758,226.15.

The board of audit certificates bear date either August 1, 1874, or since, but none were issued nor converted after the passage of the joint resolution above mentioned. They were given to compensate for work done both before and after June 20, 1874.

The act of Congress approved June 11, 1878 (c. 180, 20 Stat. L., 102, 104, 105), providing for a permanent government for the District of Columbia, required the Commissioners to make, annually, estimates for all expenses of the District, to be submitted to the Secretary of the Treasury, and, as approved by him, to be laid before Congress; and then it provides—

> To the extent to which Congress shall approve of said estimates Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia.

By the *fourth* section, the Secretary of the Treasury was required to pay the interest on the 3.65 bonds of the District of Columbia issued in pursuance of the act of Congress approved June 20, 1874, when the same became due and payable; and the amounts so paid were to be credited as a part of the appropriation for the year by the United States toward the expenses of the District.

By the *seventh* section, the offices of sinking-fund commissioners were abolished, and the duties and powers of

the commissioners were transferred to, and required to be exercised by, the Treasurer of the United States.

By an act of Congress approved March 3, 1879, (c. 182, 20 Stat. L., 377, 410), there was appropriated—

> Out of the proportional sum which the United States may contribute toward the expenses of the District of Columbia, in pursuance of the act of Congress approved June eleventh, eighteen hundred and seventy-eight, for the fiscal year ending June 30, 1879, and annually thereafter, such sums as will, with the interest thereon at the rate of 3.65 per centum per annum, be sufficient to pay the principal of the three-sixty-five bonds of the District of Columbia, issued under the act of Congress approved June 20, 1874, at maturity; which said sums the Secretary of the Treasury shall annually invest in said bonds at not exceeding the par value thereof.

This summary shows the manner in which contracts were required to be made by the board of public works and the Commissioners, the restrictions and limitations which environed them, the mode and character of payment for work done under the contracts, the history of the origin of the 3.65 bonds, their issue up to the prohibitive resolution of March 14, 1876, and the provisions for the payment of the annual interest and gradually of the principal by the United States.

There still remaining outstanding certificates, as we have seen, and many accounts being unadjusted, Congress passed "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June 16,

1880 (c. 243, 21 Stat. L., 284). By this statute it was enacted—

> That the jurisdiction of the Court of Claims is hereby extended to, and it shall have original legal and equitable jurisdiction of, all claims now existing against the District of Columbia arising out of contracts made by the late board of public works, and extensions thereof made by the Commissioners of the District of Columbia, and such claims as have arisen out of contracts made by the District Commissioners since the passage of the act of June twentieth, eighteen hundred and and seventy-four, and of all claims for work done by the order or direction of the said Commissioners and accepted by them for the use, purposes, or benefit of the said District of Columbia, and prior to the fourteenth day of March, eighteen hundred and seventy-six; and all certificates of the auditor of said Board of Public Works, all certificates issued by the auditor and comptroller of the District of Columbia, all claims based on contracts made by the levy court, all sewer certificates, all sewer taxes not heretofore converted into three-sixty-five bonds, all measurements made by the engineers of said District of work done under contracts made since February twenty-first, eighteen hundred and seventy-one, for which no certificates have been issued to and received by the contractor or his assignee, which certificates shall be prima facie evidence of the amount of work done, all claims based upon contracts made by the board of public works for which no evidence of indebtedness has been issued. Said Court of Claims shall have the same power, proceed in the same manner, and be governed by the same rules as in respect to the mode of hearing, adjudication, and determination of claims against the United States.
>
> * * * * *

By section 2 it is provided that the claims "shall be prosecuted by the contractor, his personal representative, or his assignee in the same manner and subject to the same rules, so far as applicable, as claims against the United States are prosecuted therein;" and that "the prosecution of all such claims shall be commenced in the Court of Claims by the filing of the petition of the claimant, as required by the rules and practice of said court, within six months from the passage of this act; and all claims against the District of Columbia now existing and not so filed within said time shall be forever barred," excepting those held by persons under legal disabilities.

The sixth section is as follows:

> The Secretary of the Treasury is hereby authorized to demand of the sinking-fund commissioner of the District of Columbia so many of the three-sixty-five bonds authorized by act of Congress approved June twentieth, eighteen hundred and seventy-four, and acts amendatory thereof as may be necessary for the payment of the judgments; and said sinking-fund commissioner is hereby directed to issue and deliver to the Secretary of the Treasury the amount of three-sixty-five bonds required to satisfy the judgments; which bonds shall be received by said claimants at par in payment of such judgments, and shall bear date August first, eighteen hundred and seventy-four, and mature at the same time as other bonds of this issue: *Provided*, That before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid the coupons shall be detached therefrom from the date of said bonds to the day upon which such

> claims were due and payable; and the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate fifteen millions of dollars: *Provided*, The bonds issued by authority of this act shall be of no more binding force as to their payment on the Government of the United States than the three-sixty-five bonds issued under authority of the act of June twentieth, eighteen hundred and seventy-four.

The mode of payment of the judgments provided for in this statute was changed by a provision in the act making appropriations for the District of Columbia approved March 3, 1881 (c. 134, 21 Stat. L., 458, 466), as follows:

> The Treasurer of the United States, as ex officio sinking-fund commissioner, is hereby authorized, whenever in his opinion it will be more advantageous for the District of Columbia to do so, to sell the bonds authorized to be issued under the provisions of the sixth section of the act of the Congress of the United States entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June sixteenth, eighteen hundred and eighty, for the satisfaction of the judgments which may be rendered by said Court of Claims under the provisions of said act, and pay the said judgments from the proceeds of said sales, instead of delivering to said judgment claimants the said bonds as provided for in said act.

Under these statutes a large number of cases (398) was brought in the Court of Claims, most of which were for claims growing out of contracts for the improvement

and repairs of streets, alleys, avenues, and roads in the District of Columbia and the construction and repairs of sewers and other public works. Nearly all of these cases were disposed of under the act of 1880. In some, judgments were for claimants; others were dismissed by claimants or with their consent; in others, judgments were for defendants upon counterclaims or set-offs. The counterclaims or set-offs were based upon irregular and illegal payments in excess of the contract rates for work and material, and arose in this way. This scheme of construction and improvement was of immense magnitude. Several hundred contracts were made. While the work was progressing, the board of public works, from time to time, by minutes upon their records, *established* increased prices for different kinds of work. Some of the contracts recited that payments were to be made at "board rates." Sometimes, by arbitrary arrangement with contractors, they *paid* larger rates than had been customary or were stated in the contracts. These were called "*board rates*," as distinguishable from contract rates. Work went on in this way from 1871 until the passage of the joint resolution of 1876, which suspended all work and labor to be paid for in 3-65 bonds.

The seventh section of the act of 1880 required the suits to be prosecuted diligently, and directed how, when unreasonably delayed, the court might, on motion of the Attorney-General, dismiss them, and enacted that such final judgment should be a conclusive bar against any further prosecution of such claim before any court or tribunal whatsoever.

Judgments were rendered under this act for $382,550.36 principal and $164,381.38 interest, which were paid by sale of bonds, as hereinbefore stated (19th annual report of Treasurer of U. S., p. 11). Many cases were dismissed by claimants or by the court for want of prosecution. The business was generally concluded by the end of the year 1888, though some judgments were rendered later.

In order to meet the provision of the act of 1880 for payment of judgments in bonds with coupons removed up to the date of the indebtedness, the court adopted the practice of including in each judgment an adjudication of such date of maturity of the debt.

This was the condition when Congress passed this act, February 13, 1895:

> That in the adjudication of claims brought under the provisions of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works; and whenever said rates have not been allowed, the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.

The three different sets of circumstances presented by these four appeals are as follows:

GEORGE E. JOHNSON, ADMINISTRATOR OF PETER McNAMARA, DECEASED (No. 617), AND MARGARET R. SHECKELS, HELEN E. SHECKELS, AND MARY M. D. SHECKELS, EXECUTRICES OF THEODORE SHECKELS, DECEASED (No. 618).

These cases were consolidated and tried together, under the authority of section 2, act of June 16, 1880. The contracts upon which the suits were based were all made with Peter McNamara. An assignment of the amounts due on one contract was made to Theodore Sheckels. The defendant pleaded counterclaims for overpayments made on other contracts. These overpayments were allowed by a referee to whom the case had been sent to settle an account, and an amount found due on the whole case against McNamara June 8, 1891, of $6,183.42, with interest from June 1, 1874. This, of course, extinguished the amount assigned to Sheckels, the assignee. Exceptions were filed to the report by the claimants, but permitted to rest until after the passage of the act of February 13, 1895. The Court of Claims then found that in the original suit the report of the referee was correct; but that under the act of 1895 the administrator of McNamara was entitled to recover $5,119.36 as due and payable February 1, 1872, and $1,066.06 as due and payable April 1, 1876, and that the executrices of Theodore Sheckels were entitled to recover $7,306.25 as due and payable April 1, 1876. (Record, pp. 32, 33, 34.)

From these judgments the defendant has appealed.

JOSEPH T. H. HALL (No. 619).

Hall prosecuted his claim under the act of 1880. The claim for the difference between "board rates" and contract rates involved here was not made in that suit as originally tried, but he sought relief for damages on account of the depreciation of the certificates in which he was paid, which was denied him by judgment rendered in 1885. He moved for a new trial under the second clause of the act of 1895, which was allowed, and judgment rendered for claimant in the sum of $8,664.19, *due and payable January 1, 1877*, for excess of board rates over the full contract rates paid him before suit. (Record, p. 6.)

WILLIAM DICKSON (No. 620).

Dickson was an assignee of certain interests in a contract made by one Finley. The defendant pleaded counterclaims for overpayments made under this and other contracts. (Rec., pp. 7–10.) The court dismissed the petition May 29, 1882. Dickson made a motion for new trial under the act of 1895, which was allowed. Judgment was subsequently entered in his favor for $1,386.30 upon debts of the District of Columbia adjudged to be due and payable June 2, 1873, for excess of board rates over contract rates already paid. (Rec., pp. 4–6.)

From this judgment defendant appealed.

The common point raised by these appeals here is, that these claimants are not entitled to interest prior to judgment under the act of 1895.

Another error is claimed to exist in the first two, Nos. 617 and 618, namely, that interest should have been allowed the Government on the amount which was actually and legally due from claimant in June, 1874, and continued to be so due and owing until remitted by the act of 1895.

ASSIGNMENT OF ERRORS.

I.

The court erred in adjudging the debts, for which judgments were rendered, due and payable on a day prior to the rendition of the judgments.

II.

The court erred in allowing interest upon the debts supporting the judgments rendered under the act of February 13, 1895.

III.

The court erred in not allowing interest upon the amount found due to the District of Columbia, in the claim of McNamara *v.* The District of Columbia, under the act of 1880.

IV.

The court erred in rendering judgment in favor of the claimants in No. 617 for $5,119.36, or any sum whatever.

V.

The court erred in rendering judgment in favor of the claimants in No. 618 for $7,306.25, or any sum whatever.

ARGUMENT.

These cases were brought originally under the act of June 16, 1880, to recover for work done under contracts entered into by the board of public works in pursuance of the authority of the act of February 21, 1871. They were revived in court under the act of February 13, 1895. The pending claims prosecuted under this latter statute may be divided into four classes:

First. Cases which had been fully tried and determined under the act of June 16, 1880, where there was no counterclaim or set-off and where judgment was rendered for the claimant at contract rates, refusing the higher board rates.

Second. Cases where there were claims under contracts and the defendant pleaded counterclaims, and judgments were rendered, either for the defendant on the counterclaim or for the claimant for an amount due at contract rates in excess of the counterclaim allowed; the counterclaims being for the excess of board rates, already paid, over contract rates.

Third. Cases where there were claims under contracts and defendant pleaded similar counterclaims, and the cases were not finally disposed of.

Fourth. Cases where there were pleaded counterclaims and the suits were not prosecuted, but dismissed, either voluntarily or by order of court without judgment on the merits.

The case of Hall, No. 619, comes within the first of these claims; that of Dickson, No. 620, comes within the second class; those of McNamara's and Sheckel's representatives, Nos. 617 and 618, within the third.

The counterclaims were for payments made in excess of the rates prescribed in the contracts. These payments were made by the board of public works and the board of audit in utter disregard of the law. Frequently contracts were made verbally or upon imperfect and incomplete memoranda, and not reduced to writing until a large part or all the undertakings had been completed. When the contracts were formally executed, they contained the prices as originally agreed upon. Meanwhile the board of public works had established or paid other and higher prices for similar services. In the settlement of accounts these boards often ignored the written contracts and allowed and paid the "board rates" to contractors who had executed contracts specifying different prices; so that some parties were paid the specified compensation lower than the "board rates," others a higher price regardless of the terms of the agreement. (*Shipman* v. *District of Columbia*, 18 C. Cls. R., 291; Sen. Rep., 43d Cong., 1st sess., pp. 335, 777, 785.)

In *Barnes* v. *District of Columbia* (22 C. Cls. R., 366, 385, 390), Chief Justice Richardson, speaking of these customs, for they had become customs, says:

> In reality this increase as to preexisting contracts was nothing more nor less than a gratuity, which the board directed the auditor to allow to contractors, and which they had no authority to grant from public funds. These memoranda were not signed by anybody as contracts were by law required to be signed, were unilateral, and not addressed to claimant, and he was not privy to them. They undertook to give additional compensation to contractors

> at 150 per cent above their written contract agreements, making every $100,000 of work at contract price cost the District $250,000.
>
> * * * * *
>
> It was the consummation of just such pernicious and illegal practices by the board of public works that contributed to swell the debt of the District of Columbia to more than $20,000,000. * * *
>
> It is a matter of public local history, made familiar here in Washington, if not elsewhere, through exciting Congressional investigation, that at the time of the passage of the District claims act, June 16, 1880, and previously, it was understood that the accounts and settlements of the board of public works and of the board of audit were in great confusion; and the numerous difficult cases which have been brought here upon those accounts have proved the correctness of that impression.

So irregularly and loosely was this business conducted that these "board rates" were thus paid even when they had been established before the execution of the contracts which after competitive bids stipulated for the different and lower rates. When the suits were brought under the District Claims act of 1880, the Court of Claims decided that the whole accounts should be revised and restated. They entertained the counterclaims, and when they were sustained they charged the claimants with the amounts paid in excess of the rates specified in the contracts. (*Brown* v. *District of Columbia*, 17 C. Cls. R., 402; *Campbell & Estin* v. *D. C.*, 18 C. Cls. R., 193; *Roche* v. *D. C.*, 18 C. Cls. R., 257; *Barnard* v. *D. C.*, 20 C. Cls. R., 257.)

In *Barnard* v. *District of Columbia* (127 U. S., 407, 411), upon appeal from the Court of Claims, the Supreme Court says, by Mr. Justice Field:

> The act of Congress of February 21, 1871, to provide a government for the District of Columbia, in force at the time, required that all contracts by the board should be in writing, be signed by the parties making the same, and a copy thereof filed in the office of the secretary of the District, and it forbade the allowance of any extra compensation for work done under a contract. (16 Stat. L., 419, 423, c. 62, §§ 15, 37.)
>
> The entry in the journal of the board was no part of the contract with the claimant, nor could it in any respect control the construction or limit the effect of such contract. The board could not in that way either make a new contract or alter the one previously made so as to bind the District.

Upon these principles none of the claimants in the cases before the court could have recovered under the act of 1880. (Records, *ubi supra.*) It is not contended by counsel that they could have done so. All their rights rest upon the act of February 13, 1895, which is therefore purely donative. It directs the Court of Claims to make donation of something to which, neither in law nor equity, had claimants any right until its passage.

THE ACT OF FEBRUARY 13, 1895, DOES NOT ENTITLE CLAIMANTS TO INTEREST UPON THEIR CLAIMS BEFORE JUDGMENT.

This statute creates a new right. It gives to a particular class of persons something to which there was neither legal not just claim before. It is not a remedial

statute. It does not supply any defects in the previous laws, nor correct mistakes, nor remedy mischiefs. On the contrary, it, in effect, repeals all the statutes by which safeguards were established for the protection of the public interests and the public property, by making a gift of what those statutes had forbidden parties to receive. There are no mischiefs to be remedied; there are mischiefs to be avoided.

It is not a declaratory statute. All the previous legislation up to and including the act of 1880 was antagonistic to the purposes of this act, and there was never any doubt as to the meaning and purposes of that legislation. It is not a curative statute. While its incidental effect may be to place persons affected in the condition in which the action of the board left them, the object of the act was not to validate the illegal increases of compensation. The matter originally arose upon counterclaims, demanding, when the District was sued, return of the excess of payments. These payments had been made wrongfully and in violation of positive statutes. They were contrary to the terms of the contracts and, as the Court of Claims repeatedly held, were gratuitous dispositions of the public moneys.

In every aspect the act is in derogation of all the previous laws upon the subject and of the common and statutory law of contracts as declared by this court. Any liberality of construction can only be applied as to the character of persons coming within its purview. It can not be extended to increase the scope of the benefit beyond the expressed language.

Thus: the act provides that in the adjudication of claims brought under the act conferring jurisdiction on the Court of Claims—the act of June 16, 1880—the Court of Claims shall now for the first time allow the rates established and paid by the board of public works, although as decided by this court the claimants had up to this time no right to them; and that whenever said rates have not been allowed, the claimant or his personal representatives shall be entitled to a new trial of said cause. Adjudication is adjudgment. To adjudicate—to adjudge—is to award judicially in the case of a controverted question. (Webster: Imperial Dict.) Before and in contemplation of adjudication there must be a proposition affirmed on the one hand and denied on the other. Here that proposition would have been, in the proceeding under the act of 1880, that the claimants had a right to receive "board rates;" and that must have then been denied. Such were not these cases. Hall did not claim these rates at all. The others had, in their suits, no dispute upon the question until it was raised upon *set-offs* by the defendant.

To restrict the operation of the statute to the class mentioned is, perhaps, to make too narrow and confined construction. Reasonably, it was intended to give its benefits to those who, as principals, or representatives, or assignees, had been prevented, by just operation of law, from receiving something to which they were not entitled, whether they had claimed it in the original suit or not. This would include all who got themselves into court by prosecuting a claim, no matter upon what ground, if it could

be shown that in the transactions between the District and the contractor the contractor had been paid less than the "board rates." However, such liberal construction of the statute can only be sustained upon one consideration. The payment of these moneys is a gratuity. It is, in the light of the previous unwarranted and unlawful proceedings, without the suspicion of a consideration. It is a donation, pure and simple; and whatever shape it assumes, it can be called by no other name. It has no life but the life which was breathed into it by the act of 1895. The statute must be strictly construed (*Fertilizing Co.* v. *Hyde Park*, 97 U. S., 659, 666; *Newton* v. *Connors*, 100 U. S., 548, 561; *Slidell* v. *Grandjean*, 111 U. S., 412, 437; 9 Op. Attys. Genl., 57, 59).

There is no occasion for any confusion or mistake about this question of interest. The Court of Claims now gives judgments upon amounts as if found due, under the act of 1880, when the claims could by no possibility be brought within any of the classes enumerated in the jurisdictional section of that statute; and in the same manner adjudges interest by virtue of that act of 1880.

When these contracts were entered into under the act of 1871 (16 Stat. L., 419), the contractors were to be paid for their labor and services and materials in money. The board of public works could make no contracts except in pursuance of appropriations and not until the appropriations were made (16 Stat. L., 419). Certificates were given by the auditor of the board for the amounts due. It was not until the act of 1874 (18 Stat. L., 116), that the bonds entered into the transactions; and it

was then provided that the sinking-fund commissioners were authorized to exchange the bonds at par for like sums of any class of indebtedness named in the act. These bonds were dated August 1, 1874. Prior to that date no interest was contemplated; none could be paid. Miles of streets and pavements and sewers had been constructed, and immense debts contracted; but no interest was allowed on these indebtednesses when they were converted into bonds. The issue of bonds was suspended from March 14, 1876, until the passage of the District claims act of June 16, 1880. (21 Stat. L., 284.)

The 3.65 bonds, bearing date August 1, 1874, were received in payment of the judgments under that act of 1880. The coupons were detached from the date of the bonds to the day upon which such claims were due and payable. That day was the date of the final settlement between the contractor and the District authorities, or rather the date when the work was completed. The formula, used in all judgments, recited that the amount was due and payable as of that day. Notwithstanding the Court of Claims, in some instances, made the debt due and payable on a day prior to the date of the bond, yet no interest accrued or was payable on these classes of indebtedness until after that time. By the act of March 3, 1881, Congress again made the payments of the judgments in money. To be sure, the money was received from the sale of the bonds, but interest was paid from the date when the debt was found to be due. The coupons representing this interest were detached from the bonds before the bonds were sold, and paid at the Treasury to

the debtor. The debtor had nothing to do with the bonds. They were in the Treasury, in trust, to be sold to create a fund to pay the claims with interest, after judgments were obtained.

The interest upon these bonds, paid in the manner thus stated, is paid at the Treasury of the United States. It is an indebtedness against the United States and the District of Columbia, one moiety against each. By the act to provide a permanent form of government for the District of Columbia (20 Stat. L., 102, 104), the annual estimates of the Commissioners of the amounts necessary to defray the expenses of the government of the District are submitted to the Secretary of the Treasury, and after approval by him, are delivered to the Commissioners and by them transmitted to Congress.

> To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of 50 per centum thereof, and the remaining 50 per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia. * * * Thereafter the Secretary of the Treasury shall pay the interest on the 3.65 bonds of the District of Columbia issued in pursuance of the act of Congress approved June 20, 1874, *when the same shall become due and payable;* and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia, as hereinbefore provided. (20 Stats., 104, 105.)

THE UNITED STATES IS NOT LIABLE FOR INTEREST ON CLAIMS OR DEBTS, UNLESS UNDER SPECIAL CONTRACTS OR GENERAL OR SPECIAL LAWS PROVIDING FOR INTEREST.

Attorney-General Cushing (7 Op., 524) quotes Attorney-General Legaré with approval:

> It is admitted that the Government ought not, in general, to pay interest in the absence of special contract to that effect. It is admitted that this is a stern but necessary rule, and applies to the vast majority of cases, notwithstanding the equitable principle that interest is an incident to the debt. Then why should the Government be subjected to the payment of interest in a case in which its delay to pay the principal was owing to a bona fide conviction on the part of its officers that it was not due? * * * If, therefore, mere delay to pay money due, and even delay from the laches of its agents, does not render the Government liable to pay interest, much less ought it to be made liable by a fair misapprehension of its rights on the part of its agents.

United States v. *Sherman* (8 Otto, 565) was for a mandamus to the Secretary of the Treasury commanding him to pay a sum of money with interest. The court, by Mr. Justice Strong, said:

> The act of Congress says not a word about interest. Judgments, it is true, are by the law of South Carolina, as well as by Federal legislation, declared to bear interest. Such legislation, however, has no application to the Government. And the interest is no part of the amount recovered. It accrues only after the recovery has been had. Moreover, wherever

> interest is allowed either by statute or by common law, except in cases where there has been a contract to pay interest, it is allowed for delay or default of the debtor. But delay or default can not be attributed to the Government. It is presumed to be always ready to pay what it owes. Certainly there was no delay in the present case.

In *United States* v. *Verdier*, decided November 16, 1896, this court, by Mr. Justice Brown, said:

> An inherent vice of petitioner's argument is on the assumption that he and the Government should stand upon an equality with respect to interest. The truth is that in its dealings with individuals public policy demands that the Government should occupy an apparently favored position.

In this matter the District of Columbia is upon the same footing as the United States. It is not necessary to go into a discussion of the character of the government provided for the District of Columbia. As far as the payment of these claims by the sale of the 3.65 bonds is concerned, the United States and the District can not be disassociated. You can not make partition of the interests and assign one kind of liability to the one and another kind of liability to the other. The faith of the Government of the United States is pledged for the payment of the interest and of the principal of the bonds. The interest is paid by the Secretary of the Treasury. One-half of the obligations is borne by the Federal Government.

So far, then, two things are apparent: *First*, that these claimants were not entitled to recover at all until the passage of the act of February 13, 1895; until then

there existed no debts to them. *Second*, that these claimants are not entitled to interest upon their claims, unless given to them expressly or by necessary implication by that act.

It is earnestly urged by the claimants that they are entitled to this interest because that was the intention of the statute. They find that intention, as they vehemently assert, in the history of the times and the history of the legislation. While it is admitted that a resort to these aids is proper where there is ambiguity or doubt in the language of statutes, yet it is a delicate method and must be pursued with great discretion and care. There must be no dispute as to the facts of the history. There must be no strained inferences to enlarge the statute. The circumstances must lead to an inevitable conclusion. Primarily, there must be the necessity to seek assistance in this way. In *Smith* v. *The State* (66 Md., 215, 217), upon this subject, the court said:

> Whatever latitude may, at one time, have been assumed by courts in the construction of statutes, the more recent cases have established the rule that when the language of a legislative enactment is clear and unambiguous, a meaning different from that which the words plainly imply can not be judicially sanctioned. Even when a court is convinced that the legislature really meant and intended something not expressed by the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of language which is free from ambiguity. As was said by Lord Denman in *Green* v. *Wood* (7 Adol. and E., 185), "Those who used the words thought they had effected the purpose intended. But we, looking at the words as judges, are no more

> justified in introducing that meaning than we should be if we introduced any other provision. We can do no more than give such a meaning as the words authorize." The supreme court of Ohio, in *Woodbury* v. *Berry* (18 Ohio, 462), emphatically say: "It is our legitimate function to interpret legislation, but not to supply its omissions. And the doctrine in all the States seems to be well established, and it is now universally held that if the language of a statute is plain and unambiguous there is no room for construction, there being nothing to construe."

The resort to contemporaneous history in the passage of the act under consideration involves these claimants in many contradictions and misstatements. As the Senate report on the bill for this act has been relied upon, both in the court below and in this court, notice is obliged to be taken of it. It appears from the Congressional Record that this act was reported as a substitute. The report was neither called for nor read in the Senate. The bill was called up and put upon its passage without one word of explanation or debate. In the House the report was not read; but after a few words of explanation from the gentleman having the bill in charge, principally assuring the House that no appropriation would be needed, the bill was passed there without debate. (Cong. Record, 53d Cong., Part 2, 1498, 1874.)

Moreover, the *history*, as contained in these reports, is as full of errors as is the imaginative tale of Herodotus. It is a grave mistake that nearly all parties had received "board rates." In the cases hereinbefore cited, and in the numerous cases reported in C. Cls. R., Vols. XVII to XXII, it appears that that court invariably refused to

allow these rates when different rates were named in the contracts; and over one hundred cases have been brought under the provisions of this 1895 statute. It is a grave mistake that the amount involved does not exceed from $60,000 to $70,000, and that no special appropriation will be required. Already judgments to the amount of over $80,000, not including interest, have been rendered. In addition claims were made for approximately $800,000 more, also exclusive of interest for nearly twenty years. This $60,000 to $70,000 approximated in amount the little remnant of the $15,000,000 of bonds to which the issue was limited. It is a grave error to assert that the contractors failed to receive these board rates from clerical omissions on the part of the District officials to whom was intrusted the preparation of the contracts. No such contention is made in any of these cases. Where there was such a contention, *in one case*, the Court of Claims found it was not true. (*Shipman* v. *District of Columbia*, 18 C. Cls. R., 291, 328.)

It is a mistake and misleading to assert that it was the understanding and agreement of the District with its contractors that for the work performed under them these rates should be allowed and paid. The error arises from confusing the action of the board of public works with the actions of the Commissioners and the board of audit, who did not come into existence until June 20, 1874, when most of the contracts had been entered into; and these Commissioners were authorized to complete the works and did make contracts by way of revivals and extensions. Besides which, there were contracts and

extensions entered into by the board of public works previously wherein compensation was to be at "board rates." All these matters appear in the cases decided in the Court of Claims (C. Cls. R., *supra*), as they do also in the cases at bar. (See petition and set-off, Record Nos. 617 and 618, pp. 1–10, 29; petition, Record No. 619, p. 1; petition and findings, Record No. 620, pp. 1–3.)

Now, if this is all true, and we have shown it to be true; if this was the manner of passing the act; if there is the strongest probability that the Senate report, with its mistakes and inaccuracies, does not declare the intention of Congress, the conclusion can not be arrived at, from the historical survey, that this act puts these claimants in the exact condition they would have been in if they could have brought their suits under the act of 1880.

It is further urged that the design of Congress was to put claimants upon an equality with those who had been allowed "board rates;" that the object of the statute was an equitable one, to treat all contractors alike, and that, therefore, these claimants are entitled to interest on their claims from the time of the completion of the work done by them under their contracts.

The argument proves too much. The act is, as it were, a private act for a limited class of contractors. Its advantages are given to those only who had sued under the act of 1880. Many had been settled with fully at *contract* rates and brought no suit for board rates. Such was the appellee, Hall's case. He comes, however, within the letter of the new law, because, while he sued for another purpose altogether, his accounts are set out and

his petition discloses he was not paid at "board rates;" while the others, not in this accidental position but equal in right, if such a term can be used in this connection, are excluded. Others, who had been overpaid, but had unadjusted accounts, had not brought suit, presumably because of the illegal allowances. For, if true that there was a clerical mistake in the preparation of their contracts, they could have come into court for relief with as much propriety as those who did come. At all events, if there ever was or is now an "equitable claim," they are as much entitled to be paid as McNamara and the assignors of Dickson and Sheckels. They, too, are excluded. The assertion of equality falls to the ground.

More: The act of 1880, conferring jurisdiction on the Court of Claims, says that court shall have original, legal, and *equitable* jurisdiction. And yet the Court of Claims and this court emphatically repudiated the doctrine that the contracting parties could go beyond the terms of the written contracts. True it is, as the referee said in the Sheckels case, that—

> The payments made by the District of Columbia to McNamara, through the board of public works and board of audit, mentioned in the counterclaim, were not made under a mistake of fact in regard to the nature of the work or mistake as to the prices mentioned in the counterclaim, but that all the facts in relation to each of said payments were fully known to the said boards severally at and before the times of such payments.

But they were made in the very teeth of the law, were reckless, improvident, and wholly unauthorized, and the

claimants knew it. They were disallowed by the referee and by the court. The referee found that on the whole case McNamara was indebted to the District in the sum of $6,694.41; and the court said that the finding as to the amount of counterclaim was correct when the report was made. (Record, Nos. 617 and 618, pp. 32–33.) What equity does he do, who, in his unclean hands, holds tightly the wrongfully obtained property of another?

We come back, then, to the stopping place, which never should have been left, and inquire what is the correct interpretation of this act. Although this argument may appear rather comprehensive in its scope, we have not lost sight of the ultimate design to apply it to the failure of these claimants to show their right to interest from the completion of work under the contracts until the adjudications under the act of 1895. We have seen that the act applies to a limited number of individuals; that it creates and provides for a judgment for debts which had no existence before its passage; that these debts are made debts against the United States, as well as the District of Columbia; that interest can not be recovered upon such debts unless provided for in the contract or by statute; that an intention not expressed in this statute can not be found from the history of the legislation, and is negatived by the history of the transactions; and that there is no room for a fanciful equitable construction.

The language of the act is plain, direct, unambiguous. Full effect can be given to it without adding new words and new sentences. We fail to find any authority to impose new burdens upon the United States and the

District, or give to those who come within the privileges of the law other advantages. We submit the rules for interpretation are simple.

Attorney-General Black, in speaking of cognate matters to this, said (9 Op., 59):

> First of all must be kept in mind that, as a general rule, the Government does not pay interest. The exceptions to this rule are found only in cases where the demands are made under special contracts or special laws expressly providing for the payment of interest. An obligation to pay is not to be implied against the Government as it is against a private party, from the mere fact that the principal was detained from the creditor after his right to receive it had accrued.
>
> There is another canon of construction which must not be overlooked, and that is that all laws which give away the public money are to be interpreted strictly against the party to whom it is given. He who claims a payment out of the Treasury, and bases that claim upon an act of Congress, must show the payment to be authorized, either expressly or by very clear implication. Ambiguous phrases will not serve his turn. When two meanings can be assigned to an act like this, and the arguments in favor of both are nearly balanced, the public is entitled to the benefit of the doubt. Of course, I do not now mean to say that a claim ought to be defeated by straining the sense of the law against it. But if Congress has all the money of the United States under its control, it also has the whole English language to give it away with; and it is so easy to use definite terms in a law like this that when they are not used we will presume them not to be meant.

In *Tillson* v. *United States* (100 U. S., 43) the court, by Mr. Chief Justice Waite, said:

> We have no doubt it was the wish of those who procured the special statute under which the Court of Claims took jurisdiction of this suit to obtain from Congress authority for that court to give a judgment against the United States, at least for interest, in case it should be found that payments on the contracts held by the claimants had been unreasonably delayed. But if Congress had desired to grant such authority it would have been easy to have said so in express terms, and because it did not say so we are led irresistibly to the conclusion that it did not intend to give any such power. (See also *White* v. *Arthur*, 20 Blatchf., 243, 252; *U. S.* v. *Cumming*, 130 U. S., 452.)

But it is said that the act of 1895 is an amendment to the act of 1880 and must be read with it. That is so; and so much better for the contention of the appellant. The act of 1880 hedged round these 3.65 bonds with restrictions and protections. It limited the issue, including those already delivered, to fifteen million dollars. Nearly fourteen-fifteenths of this magnificent appropriation had been theretofore recklessly and prodigally spent. It was frugal as to the interest; it required the coupons to be detached from the date of the bonds to *the day upon which the claims were due and payable.* As the bonds quickly appreciated in value provision was made for their sale and the payment of the judgments in money.

Congress, in the authority to exercise exclusive legislation over the District of Columbia, could give away the moneys of the United States and the District of Columbia, as provided in this act of 1895. It could have given

away interest from a certain day upon the principal sum. But it could not make effective a declaration that a debt was due and payable at a certain time, *under the act of 1880*, when the judicial branch of the Government had decided it was not so due; nor did Congress attempt to do so, and that which could not be done expressly can not be done by implication. It may be read of all men that these debts, created as we have seen, could not, by any honest use of language, be due until after an adjudication under the provisions of the act of February, 1895.

How, then, are these judgments to be paid? By the nineteenth annual report of the Treasurer of the United States it is shown that of the $15,000,000 of 3.65 bonds but $33,200 remain in the Treasury. The records of the Court of Claims show that judgments have been rendered against that residue, amounting, without interest, to $45,162.18. If the bonds are to be sold to pay as far as they will go, the coupons would be detached and canceled up to the time of the rendition of judgment. After that, what? Will Congress authorize issue of 3.65 bonds, bearing coupons and dated August 1, 1874, to meet the incoming deluge of judgments, to be paid as if rendered under the act of 1880? Or will Congress appropriate, to be paid at the Treasury of the United States, a sufficient sum to pay the principal in these judgments, with interest amounting to from 70 to 82 or 83 per cent, to these contractors who had before been paid all that was due them? It is safe to say they never have done so and never will do so.

II.

The McNamara and Sheckels cases, Nos. 617 and 618.

Another question presents itself as follows:

Judgments were not rendered in these cases under the act of 1880. The referee found that Sheckels was not entitled to recover on account of indebtedness of his assignor, set up in the counterclaim and allowed; and that McNamara, upon the whole case, was indebted to the District of Columbia in the sum of $6,694.41, with interest from June 1, 1874. That debt continued to be due and payable till the act of 1895. The defendant contends it is entitled to have that interest deducted from the amount of any judgment rendered in favor of these claimants, under the act of February 13, 1895. The Court of Claims finds that this finding of the referee was correct under the act of 1880. (Record, Nos. 617 and 618, p. 33.) It decides upon the authority of *Pacific Railroad* v. *United States* (158 U. S. R., 118), that defendant can not have this interest by way of counterclaim. That case was upon payment of a debt, and the court decided that the judgment debtor having accepted the full amount of the judgment in payment of the debt, he is estopped from claiming interest. Here there was no judgment. But the court below finds the District of Columbia was entitled to recover the principal with interest at that time. If there had been judgment the District could have recovered it. Because the claimant is *now* entitled to recover as a special privilege and gift, does not, in the absence of express declaration, entitle

him to recover this interest which was due to the District. He has unjustly detained this money from the defendant for twenty years. Upon the decisions cited in this brief he is liable for this amount. True, he can recover back the principal which he owed at the time of the prosecution of his suit in 1880. But this is a specific sum thus donated to him. He takes that and nothing else. Therefore, if the interest was a debt, he is entitled to have it set off against the judgment rightfully rendered under the act of 1895.

JOSHUA ERIC DODGE,
Assistant Attorney-General.
ROBERT A. HOWARD,
Special Assistant Attorney.

Supreme Court of the United States

OCTOBER TERM, 1915

No. 617.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

GEORGE E. JOHNSON, ADMINISTRATOR, ETC., OF PETER McNAMARA, DECEASED.

No. 618.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

MARGARET R. SHECKELS, HELEN G. SHECKELS AND MARY M. D. SHECKELS, EXECUTRIXES OF THOMAS SHECKELS, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the Executrixes of Thomas Sheckels, Deceased.

W. H. COLE,

Attorney for Executrixes of Thomas Sheckels.

him to recover this interest which was due to the District. He has unjustly detained this money from the defendant for twenty years. Upon the decisions cited in this brief he is liable for this amount. True, he can recover back the principal which he owed at the time of the prosecution of his suit in 1880. But this is a specific sum thus donated to him. He takes that and nothing else. Therefore, if the interest was a debt, he is entitled to have it set off against the judgment rightfully rendered under the act of 1895.

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DEC 21 1896
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APPEAL FROM THE COURT OF CLAIMS.

Brief for the Executrices of Theodore Sheckels, Deceased.

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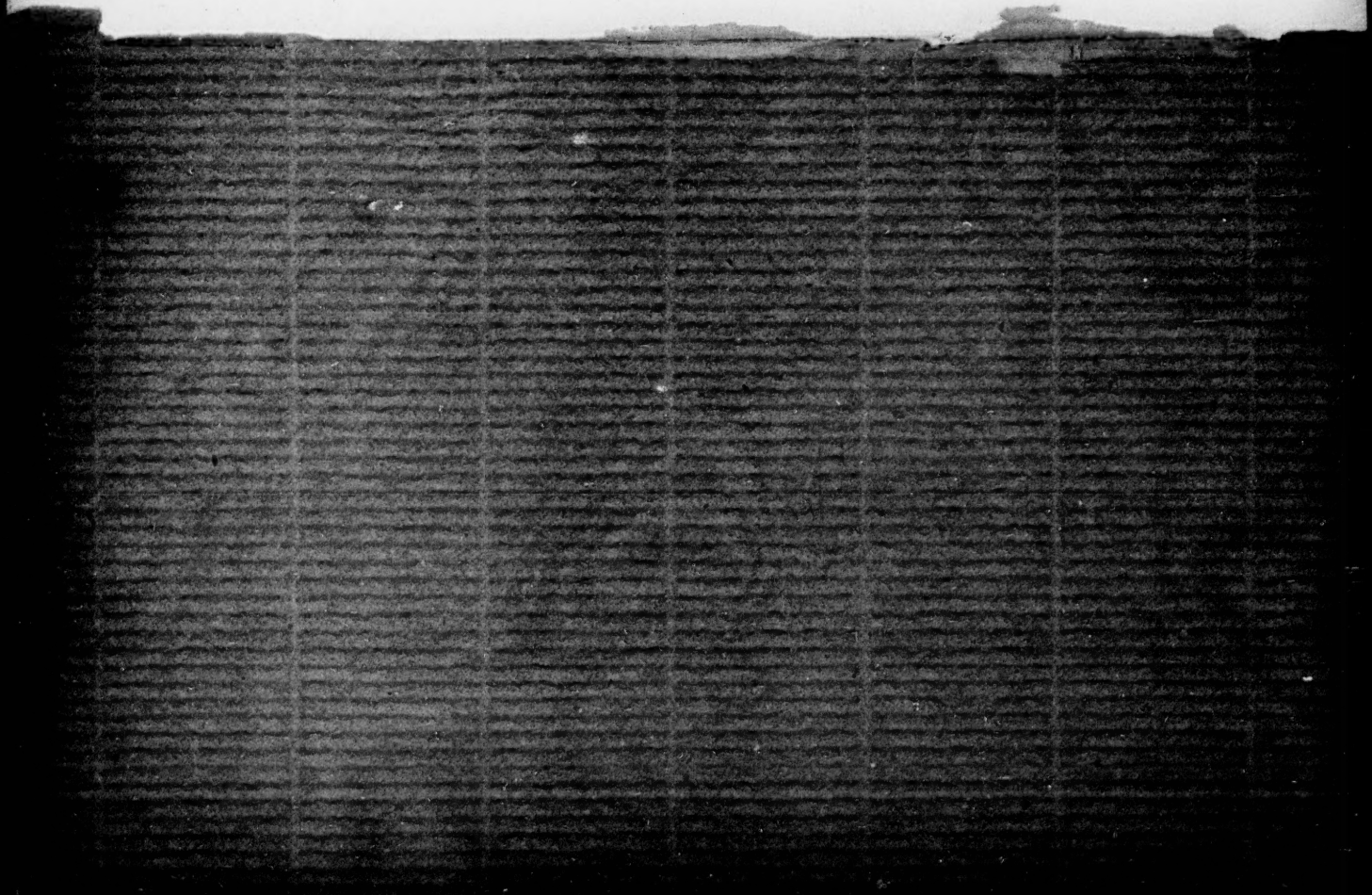

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 617.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

GEORGE E. JOHNSON, ADMINISTRATOR, ETC., OF PETER MCNAMARA, DECEASED.

No. 618.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

MARGARET R. SHECKELS, HELEN C. SHECKELS, AND MARY M. D. SHECKELS, EXECUTRICES OF THEODORE SHECKELS, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the Executrices of Theodore Sheckels, Deceased.

STATEMENT OF THE CASE.

The only question in these cases arises upon the set-off claimed by the appellant which was rejected by the court below. The set-off was an alleged overpayment by the District to the claimant, McNamara, of $21,113.18 in settlement for work done by him for the District under a certain contract numbered 248. In that settlement McNamara

was allowed for the work done by him under said contract, prices which were known as "board rates," i. e., prices which had been established and paid by the Board of Public Works for similar work. The prices so paid him were in excess of the prices named in the written contract between him and said Board.

At the time the referee made his report in this case the Court of Claims had decided in several cases that the Board of Public Works had no power to make a valid agreement for such work except by contract in writing; that the prices named in the written contract must govern the parties, and that payments made in excess thereof were overpayments, which might be allowed the District by way of set-off against money due the contractor for work done under other contracts.

Roche's Case, 18 C. Cls. R. 217.
Barnard's Case, 20 C. Cls. R. 257.
Barnes' Case, 22 C. Cls. R. 366.
Eslin's Case, 22 C. Cls. R. 395, and 29 C. Cls. R. 370.

The decision of the Court of Claims in this regard was approved by this court.

Barnard *vs.* The District of Columbia, 127 U. S. 409.

Governed by these decisions the referee in these cases, after ascertaining that the sums due the claimants under the several contracts mentioned in the petition amounted in the aggregate to $14,418.77, found that the defendant was entitled, on account of overpayments to McNamara under said contract No. 248, to the offset of $21,113.18, above mentioned, and therefore reported that the defendant was entitled to recover from the claimant McNamara the difference, to wit, $6,694.41, with interest from June 1, 1874, the date of the settlement with McNamara under his said contract No. 248.

After this report of the referee was filed and prior to any hearing of these cases in the court below, Congress passed the following act:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the adjudication of claims brought under the provisions of the act entitled 'An Act to provide for the settlement of all outstanding claims against the District of Columbia and conferring jurisdiction on the Court of Claims to hear the same and for other purposes,' approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the Board of Public Works; and whenever said rates have not been allowed the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.
>
> "Approved, February 13th, 1895."

Upon the trial of these cases in the Court of Claims, that court rejected the set off claimed by the defendant—that is, it allowed the said McNamara, in the settlement for work done under his said contract, No. 248, "the rates established and paid by the Board of Public Works," pursuant to the mandate of the Act of Congress above quoted, and rendered judgment in favor of claimants for the respective sums found due them by the referee's report.

From this judgment the defendant has appealed. The contention of the appellant in the court below was that the counter-claim should draw interest from the time the money was paid to McNamara, as reported by the referee, because it was a legal and valid counter-claim until the passage of said Act of February 13, 1895, (see opinion, Record, p. 33) and it is assumed that the same contention will be made here.

ARGUMENT.

Under the Act of Congress of June 16th, 1880 (U. S. Stat., Vol. 21, p. 284), giving the Court of Claims jurisdiction of this class of cases, the court has nothing to do directly with the question of interest upon the judgments it may render. The sixth section of that act requires the claimants to accept in payment of all judgments recovered under said act, three sixty-five bonds authorized by Act of Congress, approved June 20th, 1874, to bear date August 1st, 1874, and provides that before the delivery of such bonds to the claimants in payment of judgments so rendered "the coupons shall be detached therefrom from the date of said bonds to the day upon which said claims were due and payable."

The court has, in view of this provision of the statute, uniformly found and entered as part of its judgment the date when the debt due the claimant became due and payable.

The question, therefore, in these cases is when did the several sums due the claimants become due and payable.

Were they due and payable at the dates fixed by the judgments appealed from? or, were they due and payable as of the date of the passage of the Act of February 13, 1895?

It should be observed at the outset that the alleged over payment to McNamara, which is the sole foundation of the counter claim of the appellant, was not the result of any mistake, inadvertance or intentional wrong on the part of either the contractor or the District officials.

The referee in his report, which was adopted as the findings of the court, (Record, p 23, finding V.) says:

> "The payments made by the District of Columbia to McNamara, through the Board of Public Works and the board of audit, mentioned in the counter-claim, were not made under any mistake of fact in regard to the nature of the work, or mistake as to

the prices mentioned in the counter-claim, but that all the facts in relation to each of said payments were fully known to the said boards severally at and before the times of such payments."

"The prices paid McNamara were reasonable and fair for the work which he did, and were the prices paid other contractors doing similar work at that time and on parallel streets, avenues and roads."

The Board of Public Works had, by orders and resolutions entered upon the minutes of the Board, fixed certain uniform rates to be paid to all contractors for doing certain kinds of work in grading and improving streets, laying sewers, etc. These rates became known as "board rates" and were uniformly allowed and paid to contractors for work done for the District in all settlements made by the Board of Public Works. After the Board was abolished, and the Board of Audit was created to make settlement with contractors whose accounts remained unsettled (Act of June 20, 1874, U. S. Statutes, Vol. 18, p. 118, Sec. 6), "board rates" were uniformly allowed by the Board of Audit in settlement with the contractor. It was not until after the Board of Audit was abolished and after the Court of Claims was given sole jurisdiction by the Act of June 16th, 1880, to audit these contractors' claims that the technical rule of law was applied that nothing but the written contract required by law could be looked to in settlements for work done, although the written contract did not express the true agreement between the parties.

The Act of Congress of February 13th, 1895, is, therefore, a remedial act designed to relieve claimants in all this class of cases from the inequitable enforcement of the statute requiring the contracts between the Board of Public Works and the contractors to be in writing and signed by the parties (16 Stat. 419, 423), and to allow them the rates established and paid by the said Board for such work, which were the rates in contemplation by both parties at the time

the work was done, and the rates which every contractor was paid until the decisions of the Court of Claims hereinbefore referred to.

The effect of the act would seem clearly to legalize and and ratify the settlement made between the Board of Public Works and McNamara for work done by him under his contract No. 248. It requires the Court of Claims to allow him for that work "board rates," which are the rates actually allowed by the board in making the settlement. The entire counter claim of the appellant was wiped out by the act.

But it is claimed on behalf of the appellant, in substance, that the state of the accounts between the claimant, McNamara, and the District, immediately prior to the Act of February 13th, 1895, showed a legal claim in favor of the District against the estate of McNamara of $6,694.41, with interest from the 1st day of June, 1874, and that only upon the passage of that act, and not before, was any debt due from the District to the estate of said McNamara, and therefore that the court should have found that the sum of $14,418.77, found to be due the claimants, became due and payable as of the 13th day of February, 1895.

Even if, according to the strict and technical rules of law, there was *legally* no debt due by the District to the claimants until the passage of the Act of February 13th, 1895, it is certainly true that *equitably* there was, before the passage of that act, the full sum of $14,418.77 due from the District to the claimants, for work done by said McNamara for the appellant, completed and accepted by the appellant, and accounts for the same stated as of the dates mentioned in the judgments appealed from; and the only pretense for claiming that said sum was not due claimant was that, by the decision of the court, the claimants were not permitted to prove the rates actually agreed upon and actually paid for the work under said contract No. 248.

In this connection it is to be remembered that there never was any adjudication by the court below in this case

that the appellant was entitled to the set-off claimed. The principle mentioned had been applied in other cases, but these causes were pending and undetermined when the Act of 1895 was passed. Had the causes been tried below and the set-off allowed, and the debt thereby cancelled, and the present judgments rendered upon a new trial granted pursuant to the last clause of the act, there might have been more ground for the contention that there was the creation of a new debt as of the date of the act. But even in such case it would seem that the effect of the act is to revive an old debt rather than create a new one. But that question need not be considered in the disposition of these cases. The true principle seems to be contained in the opinion of Chief Justice Richardson (Record, p. 34), where he states:

> "In the case of Pacific Railroad *vs.* United States (158 U. S. 118), the Supreme Court decided that when the principal of a debt is extinguished by payment, the interest is also extinguished. This rule of law applies with equal force when the principal is extinguished by Act of Congress."

The settlement between McNamara and the District, of accounts under contract No. 248, made in 1874, having been equitable, even if not strictly and technically legal, Congress had the power to declare it legally valid, and that it should not be disturbed, and the act in question in explicit language so directs, and the court below did not err in carrying the intention of Congress into effect.

If the court had adopted the views of the counsel for the appellant, and found that the debt due claimants in these cases became due and payable the 13th of February, 1895, (the date of the passage of said Act of Congress), it would have fallen short of giving effect to the plain requirement of said act. The allowance of "board rates," as specifically required by said act, for work done under said contract No. 248 must necessarily eliminate all payments made under that contract from consideration in these cases, as all of

those payments were made at "board rates," which said act renders legal and valid, even if they were not so before.

If a shadow of doubt can exist that the construction given this act by the Court of Claims is the correct one, it will be removed at once, upon considering the purpose for which it was enacted.

That construction should be given a statute which will carry into effect the true intent of the legislature; and the courts in construing a law may look to the history of the times and to the history of the legislation for the purpose of gathering light as to the object had in view by the legislature in passing the law, and the intention may be collected from the cause or necessity of making the act, or from foreign circumstances.

The object sought to be accomplished exercises a potent influence in determining the meaning of not only the principal but also of the minor provisions of the statute. To ascertain it fully the court will be assisted by knowing and it is permitted to consider the mischief intended to be removed or suppressed, or the necessity of any kind which induced its enactment.

[redacted]

U. S. *vs.* Union Pacific R. R., 91 U. S. 72.
Ruggles *vs.* Illinois, 108 U. S. 526.
Church of the Holy Trinity *vs.* U. S., 143 U. S. 457.

In the case last cited resort was had by the court to the history of the subject matter of the law, and the history of its enactment, including petitions presented to Congress and reports of committees thereon.

In order that the court may be fully informed as to the history of the subject matter and the purpose of the passage of the Act of February 13, 1895, the report thereon, in pursuance of which it was passed, submitted to the Senate of the United States on the 18th of January, 1895, by the

Committee on the District of Columbia is here set out in full, as follows:

"REPORT:

"[To accompany S. 2165.]

"The Committee on the District of Columbia, to whom was referred the bill (S. 2165) entitled 'A bill to amend an act entitled an act to provide for the settlement of all outstanding claims against the District of Columbia, etc., approved June 16, 1880,' have had the same under consideration, and beg leave to submit the following report:

"The history of these claims is stated in a letter from the Commissioners of the District under date of July 5, 1894, recommending this legislation, addressed to the chairman of the Committee on the District of Columbia, as follows:

"'The history of these claims is substantially as follows:

"'The Board of Public Works which was created by the Act of Congress entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, was charged with the entire control of municipal improvements in said District. The execution of these improvements was done under contracts with the Board of Public Works, and at prices fixed by it. Several months after the commencement of these works the said board readjusted the contract price. These revised prices were technically called "board rates." In most cases where "board rates" were allowed, the modification of the contract so made was embodied in a written agreement in due form; in others, by written or oral orders or correspondence, which, through clerical inadvertance or other causes not affecting the intention of the contracting parties in the premises, had not reached the stage of a formal contract.

"'Upon the abolition of the Board of Public Works nearly all of the work in progress under contracts with that board at the time was suspended. Subsequently, most of this unfinished work was recommenced and completed at board rates under new

contracts, denominated "extensions" of the suspended contracts, made with the Board of Commissioners which succeeded the Board of Public Works. The claims under consideration were mainly for compensation for work done under these so-called extensions. The duty of auditing the unsettled accounts of the Board of Public Works after its abolition, and the accounts for work done under the aforesaid extensions of contracts, was imposed by law upon a board of audit, composed of the First Comptroller and the (First Auditor) Second Comptroller of the United States Treasury Department. This board audited and allowed accounts for work done at "board rates" under the informal authority of the Board of Public Works hereinbefore mentioned, thus adopting without material qualification a practice which appears to have been uniformly pursued by the latter board.

"'The board of audit was evidently invested with complete and conclusive jurisdiction in the adjustment of accounts passed upon by it under that law. The statute made it the duty of the board "to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and the Board of Public Works," therein specified, among which were: "Fourthly, claims existing or hereafter created for which no evidence of indebtedness has been issued arising out of contracts, written or oral, made by the Board of Public Works" (Stat. at L., Vol. 18, p. 118); "Fifthly, claims for which no evidence of indebtedness has been issued arising out of contracts, written or oral, made by or on behalf of the District of Columbia," and issue to each claimant a certificate stating the amount found to be due to each, and on what account (Stat. at L., Vol. 18, p. 118).

"'The board of audit was abolished March 14, 1876 (U. S. Stat., Vol. 19, p. 211), and jurisdiction over the claims under consideration vested in the United States Court of Claims by an act approved June 16, 1880 (U. S. Stat., Vol. 21, p. 284). The Court of Claims appears to have first inclined to favor the application of equitable principles to the adjudication of these

claims; but its later decisions show a different ruling in this respect, mainly on the strict technical grounds that the allowance of rates different from those in the formal written contracts was incompatible with the law, which required all contracts of the Board of Public Works to be in writing. When contractors who had been paid at the "board rates" for work done under the informal agreements referred to applied to the Court of Claims for payment for work done under their new contracts, or so-called "extensions" of contracts, they were met by a ruling on behalf of the District for a set-off against the sum found due them, of the amount so paid them in excess of the rates specified in their formal contracts with the Board of Public Works. So long as that court persists in the ruling it has made in these cases these claimants can only obtain relief through further action by Congress. Notwithstanding the fact that they took timely advantage of the act of Congress authorizing them to submit their cases to that court, the statutes of limitations would prevent them from obtaining a hearing in the District courts. If the measure recommended by the Commissioners should be enacted no special appropriation would be required to pay judgments that might be rendered under it.

"'Very respectfully,

"'JOHN W. ROSS,

"'*President Board of Commissioners,*

"'*District of Columbia.*'

"In addition to the grounds stated by the Commissioners, your committee would further add that it clearly appears from the contemporaneous report of the Committee on the District of Columbia at the time of the passage of this act of June 16, 1880, that it was the intent of that act that the claims referred under it should be so audited and allowed. That committee had before it schedules of claims computed at these rates, and the annual report of the Commissioners for 1877 had so reported them as outstanding claims (Ex. Doc. No. 1, part 6, Forty-fifth Congress, second session, p. 5). It further appears from the report of the engineer of the District (Ex. Doc. No. 1,

part 6, Forty-fourth Congress, second session, p. 489), as well as the sworn answers of the Commissioners of the District (House Mis. Doc. No. 103, Forty-fourth Congress, first session, part 2, p. 159), that it was the understanding and agreement of the District with its contractors that for the work performed under them these rates should be allowed and paid, and a circular to that effect was issued to all contractors whose contracts were revived by the Commissioners. A corresponding advantage was given the District, in that 3.65 bonds, then rating at from 65 to 75 cents, were to be received at their par value in substitution of the clause that required monthly payments to be made in cash.

"That these rates were only a reasonable compensation for the work performed is fully attested by the Commissioners in their sworn statement above referred to, page 160, *supra*, and the annual report of the engineer of the District for 1876, pages 489–491, *supra*. From a careful estimate it appears that the amount involved in thus carrying into effect what your committee find to be the true intent of both parties to the contracts will not exceed from $60,000 to $70,000, it appearing that nearly all parties have received these rates, and those who have failed so to receive it have failed from clerical omissions on the part of the District officials, to whom was intrusted the preparation of the contracts. The proposed legislation does not extend to any claims other than those already filed, and does not permit the institution of new suits. It is further shown that these rates were made the basis of assessments against the property abutting the improvements, and has been collected from the property owners in all cases. No additional appropriation is needed to carry this law into effect. Legislation on this subject has been pending for many years and has been favorably reported from time to time to both Houses of Congress and has universally received favorable recommendations from the Commissioners of the District.

"In view of all the facts your committee have framed a bill which they report back as a substitute for Senate bill 2165, and recommend that it pass."

This being a remedial statute it is to be construed liberally in advancement of the remedy thereby created.

White *vs.* Cotzhausen, 129 U. S. 329.

The appellant, speaking by and through this Act of Congress and upon the recommendation of its executive officers, has, in the interest of justice, abandoned all of these claims for alleged overpayments to contractors, and said to the court which had jurisdiction of the cases to allow all claimants whose claims against the District remain unsettled the rates that were established and paid by the Board of Public Works, and in all cases that have been adjudicated by the court to grant a new trial to the claimant to the end that he may be allowed the same rates.

The purpose of the appellant in recommending this legislation and the purpose of Congress in enacting it is too apparent for misapprehension. The purpose was to treat all contractors alike. The great majority who had been fortunate enough to get their claims audited and settled before the abolition of the Board of Public Works and the Board of Audit, had received the higher rates of compensation fixed by the former Board; the few who were unable to get their claims audited and paid during the transition period from the old form of government to the new, were compelled by the judgment of the court to take less, and were adjndged in some instances to repay money which had been paid them in good faith in settlements with the District. The act under consideration seeks to remedy this inequality and injustice. It should be so construed by the court as to effectuate that end. This is the construction given it by the Court of Claims, and it is respectfully submitted that its judgment should be affirmed.

W. L. COLE,
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J. J. Johnson
atty for Administrator
George E. Johnson.